

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 93 of 2017

Ganesh S/o Niranjan Kamble,
Aged about 45 years, Occupation : Police Hawaldar,
B.N. 1321, R/o C/o Dilip Inkane, Tadudwar Nagar,
Armori, Tq. Armori, Distt. Gadchiroli.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary, Home Department,
Mantralaya, Mumbai-32.
- 2) Police Establishment Board no.2,
Gadchiroli, through Superintendent of Police,
Gadchiroli.
- 3) Superintendent of Police,
Gadchiroli.

Respondents

Shri P.V. Thakre, Advocate for the applicant.

Shri A.M. Khadatkhar, Id. P.O. for the respondents.

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

JUDGEMENT

(Delivered on this 10th day of August,2017)

Heard Shri P.V. Thakre, Id. Counsel for the applicant and

Shri A.M. Khadatkhar, Id. P.O. for the respondents.

2. The applicant has challenged his order of transfer dated 5/11/2016 (A-4,P-16). Vide impugned order the applicant has been transferred on the post of Police Head Constable at Police Station, Armori to Police Head Quarter at Gadchiroli. It seems that in all 9 police personnel have been transferred vide said order. According to the applicant, he was transferred to Armori from Aheri vide order dated November, 2014 and has not completed his tenure at Armori and therefore the said order is mid-term and mid tenure. It is stated that the said order has been issued in view of the complaints against the applicant, but he was not given opportunity to defend the complaints and therefore the said order is against the provisions of Section 22N of the Maharashtra Police Act. The approval of the higher authority was not taken for transferring the applicant. The applicant has therefore prayed to quash and set aside the said impugned order dated 5/11/2016 issued by respondent no.3, the Superintendent of Police, Gadchiroli.

3. In the reply-affidavit filed on behalf of respondent no.3, it is stated that an inquiry is going on against the applicant since he was indulging in corruption. It is further stated that the transfer of the applicant is in the administrative convenience and has been passed as per the provisions of the Maharashtra Police Act under which the powers are vested in the District Establishment Board of which the

Superintendent of Police is President. In order to ensure law and order situation as well as to safeguard the interest of common people and also considering the serious allegations of the corruption the transfer order is issued. It is stated that there is a distance of just 28 Kms., between Armori and Gadchiroli. The applicant was indulging corruption by allowing illegal liquor sellers to run business under his Beat and despite of instructions from superior he did not care to check the illegal business. In short the respondent no.3 has tried to justify the order.

4. The learned counsel for the applicant submits that as per the provisions of Section 22N of the Maharashtra Police Act a normal tenure of Police Constabulary is five years at one place of posting and if the transfer is to be carried out prior to completion of such tenure, the approval of competent authority is necessary. Since no such approval is taken, the order of transfer is not legal. In this regard, I would like to state that the power to transfer a Constabulary /Head Constabulary is with Police Establishment Board at district level as per provisions of Section 22J-1. Section 22J-2 deals with the functions of Police Establishment Board at District level and Section 22J-2(a) & (b) is the relevant provisions so far as the applicant is concerned and the said provisions read as under :-

“22J-2 : 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 authorized 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.”

5. The aforesaid provision shows that the Board at district level shall decide all transfers, postings of police personnel to the rank of Police Inspector within the district police force.

6. Sub clause (b) of the said Section 22J-2 makes it crystal that in case of such transfers out of the district, the approval of Police Establishment Board no.2 is to be opted. In the present case since the applicant is a Head Constable, the Police Establishment Board at district level has all the rights to transfer any Constabulary within district at any time. The word “all transfers” in section 22J-2 (a) makes

it crystal clear that all transfers means regular transfer, mid-term transfer or any kind of transfer.

7. Perusal of the impugned order of transfer shows that the said order has been passed by the Establishment Board at District, it may be signed by the Superintendent of Police, Gadchiroli. The reason for transfer is that the Board has considered the vacancy of the posts in the district at various places and also in the interest of public and in order to consider law and order situation. The order therefore seems to be as per the administrative convenience.

8. The learned counsel for the applicant submits that the applicant's transfer is due to allegations made against applicant. In this regard it is stated in the reply-affidavit that there are number of allegations against the applicant which includes allegations of corruption, joining hands with illegal sellers of the liquor etc. it is stated that inquiry is contemplated against the applicant for such misdeeds. In such circumstances, the order of transfer cannot be said to be illegal or punitive merely because inquiry is being initiated. In fact the Board might have thought it proper to shift the applicant at Head Quarter in order to carry out a free and fair inquiry against applicant. There is no mention in the order of transfer that the applicant has been transferred because of complaints against him. Thus I am satisfied that the order must be in the public interest or for

administrative convenience. The learned P.O. has place reliance on the Judgment delivered by this Tribunal at Aurangabad Bench on 3/11/2015 in O.A. 455/2015 in the case of **Omprakash S/o Dhondiram Mane Vs. Director General of Police (M.S.) & Ors.**, in which similar view has been taken by this Tribunal. From the discussions in forgoing paras, I am therefore satisfied that the decision taken by respondent no.3 in transferring the applicant just at a distance 28 Kms. from Armori, i.e., at Head Quarter, Gadchiroli cannot be said to be malafide or illegal and hence I do not find any reason to interfere in such transfer order. Hence the following order :-

ORDER

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

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

dnk.