

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO.609 OF 2016

DIST. :AHMEDNAGAR

Devidas s/o Ruplal Pawar,
Age.53 years, Occu. : Service as
Assistant Police Inspector,
Police Station Rahata,
Tq. Rahata, Dist. Ahmednagar.

-- APPLICANT

V E R S U S

1. The State of Maharashtra
Through its Secretary,
Home Department, Mantralaya,
Mumbai – 32.
2. The Director General of Police,
ShahidBhagatsinghMarg,
Kulaba, Mumbai – 400 001.
3. The Special Inspector General of
Police, Nashik Range, Nashik.
4. The Superintendent of Police,
Ahmednagar. --

RESPONDENTS

APPEARANCE :- Shri V.B. Wagh, learned Advocate for the
applicant.

: Smt. Priya R. Bharaswadkar, learned
Presenting Officer for the respondents.

CORAM : **Hon'ble Shri Justice M.T. Joshi,**
Vice Chairman

DATE : **5th May, 2017**

ORDER

1. Heard Shri V.B. Wagh, learned Advocate for the applicant and Smt. Priya R. Bharaswadkar, learned Presenting Officer for the respondents.

2. Aggrieved by the mid-tenure transfer from the post of Assistant Police Inspector, Police Station, Rahata to the office of Superintendent of Police, Nasik (Rural), the applicant has filed the present original application.

3. Admitted facts on record are that the applicant came to be regularly transferred vide order dated 30.5.2016 from the jurisdiction of Nasik (Rural) to Ahmednagar (Rural) and thereafter is posted at Rahata. Vide the impugned order dated 29.7.2016 (Annex. A-1) he, however, is again transferred within the jurisdiction of the Superintendent of Police, Nasik (Rural) and hence the applicant has approached the Tribunal by the present original application.

4. Affidavit in reply filed on behalf of res. nos. 1 to 4 would show following reasons for mid-tenure transfer of the applicant on the recommendation of the Police Establishment Board :-

- (i) On 28.6.2016 one Shri (Dr.) Rajendra Madanlal Pipada filed a complaint, wherein he alleged that the applicant used to keep good relation with the criminals and used to beat the complainants. He had, therefore, prayed for transfer of the applicant after his promotion and not to keep him at the same place. Preliminary enquiry in the complaint is initiated.
- (ii) The Sub Divisional Police Officer, Shirdi on the eve of Ramzan has visited Rahata Police Station on 2.7.2016, and the applicant, who should have been on night round duty, was found absent. Therefore, the S.D.P.O., Shirdi has taken entry in the Police Station Diary to that effect.
- (iii) In view of above situation a preliminary enquiry was started against the applicant and the same is pending.
- (iv) It is further averred that, since election of Rahata Municipal Council was forthcoming, it was desired that the applicant be shifted as there were previous complaints against the applicant when he was posted at Loni Police Station in Ahmednagar District. In view

of this, the default report was sent and on constitution of the Board, the impugned order came to be passed.

5. The learned Advocate for the applicant submits that, merely because a person belonging to certain political party files a complaint before the Superior cannot be a ground for a mid-tenure transfer. He submits that the action is taken in breach of the provisions of sec. 22 (N) of the Maharashtra Police Act. He has placed reliance on the order dated 10.3.2017 of the Principal Seat of this Tribunal at Mumbai in O.A. no. 609/2015 [Shri Rajendra Mahadeo Todkar Vs. the State of Maharashtra & Ors.].

6. On the other hand, the learned P.O. submitted that the applicant has been transferred by the impugned order not only on the basis of complaint received from Shri (Dr.) Rajendra Madanlal Pipada but also the preliminary enquiry in that regard is also initiated. Further S.D.P.O., Shirdi had found the present applicant absent on night round duty in the crucial period of Ramzan. Further considering the ensuing election of Rahata Municipal Council and earlier incidents regarding complaint against the applicant the Board has taken a decision of transfer of the applicant, which cannot be faulted as against the provisions of Sec. 22 (N) of the Maharashtra Police Act.

7. Perused the reasons forwarded in the above referred judgment of the Tribunal at Mumbai. The reading of the said judgment would show that no preliminary enquiry was initiated against the applicant therein and the same was started after issuance of the transfer order of the applicant (para 10 page 11 of the said judgment). Further in the affidavit in reply filed by the respondents therein it was not at all averred that the applicant therein was transferred as disciplinary proceedings were initiated or contemplated against the said applicant (para 7 page 8 & 9 of the said judgment).

8. The copy of the complaint made by Dr Pipada is on record. Further the copy of the Police Station Diary of the relevant date is also placed on record. The reliance is placed from the side of the respondents on the decision dated 12.8.2016 in O.A. no. 414/2016 [SANJAY JABAJI KHANDANGLE VS. THE STATE OF MAHARASHTRA & ORS.] wherein the Establishment Board has taken into consideration various grounds to transfer a police officer and no mala-fide was found and therefore the transfer order was upheld in the said matter.

9. Considering all the facts on record, in my view, the present original application deserves to be dismissed for the

reasons that the preliminary enquiry is pending against the applicant, the present applicant was allegedly found absent on night duty round during the crucial period of Ramzan and, therefore, the action of the Establishment Board cannot be termed as mala-fide. Hence the following order :-

The Original Application is dismissed without any order as to costs.

10. When the present order is pronounced in the Court, Shri V.B. Wagh, learned Advocate for the applicant submits that effect and operation of the present Order be stayed for some period. At his request, the effect and operation of the present order is stayed for a period of next 2 weeks only.

VICE CHAIRMAN

CORRECTED ARJ-O.A. NO. 609-2016JUS. MT JOSHI(TRANSFER)