

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.106 OF 2020

DISTRICT : SATARA

Shri Nanasahab D. Hole.)
Occu.: Police Naik, R/o. Maloji Nagar,)
Koloki Phalton, District : Satara – 415 523.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Addl. Chief Secretary,)
Home Department, Mantralaya,)
Mumbai – 400 032.)
2. The Superintendent of Police.)
Malhar Peth, District : Satara.)...**Respondents**

Mr. R.M. Kolge, Advocate for Applicant.

Mr. A.J. Chougule, Presenting Officer for Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 13.03.2020

JUDGMENT

1. Heard Shri R.M. Kolge, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

2. Short issue posed for consideration in the present O.A. is whether after revocation of suspension and reinstatement in service, whether the Applicant is entitled for posting at the same post and place from which he was suspended.

3. The Applicant is presently serving as Police Naik on the establishment of Respondent No.2 – Superintendent of Police, Satara. Earlier by order dated 24.07.2016, he was transferred to Police Station Phaltan and accordingly joined there. While he was serving at Police Station Phaltan, he was suspended by order dated 23.03.2019 in contemplation of departmental enquiry (D.E.) on the allegation that he has demanded bribe to release vehicles carrying sand illegally. The Applicant has challenged suspension order dated 23.03.2019 by filing O.A.463/2019. The Tribunal by order dated 05.11.2019 directed Respondent No.2 to take review of suspension of the Applicant and pass appropriate order within four weeks from the date of order. Similarly, the directions were also issued to complete the D.E. initiated against the Applicant.

4. In pursuance of direction given by this Tribunal in O.A.460/2019 (Nanasaheb Hole Vs. State of Maharashtra) decided on 05.08.2019, the suspension of the Applicant has been revoked and he was reinstated in service by giving him posting at Police Head Quarter, Satara by order dated 09.10.2019. The reinstatement was subject to finality of departmental proceedings. Later, the Applicant was exonerated in D.E. by order dated 04.12.2019. Therefore, the Applicant had made an application/representation to Respondent No.2 for reinstating him at Police Station Phaltan in view of his exoneration in D.E. However, the Respondent No.2 by order dated 11.12.2019 rejected the representation and confirmed his posting at Police Head Quarter, Satara. This order is under challenge in the present O.A.

5. Shri R.M. Kolge, learned Advocate for the Applicant submits that in view of exoneration of the Applicant in D.E, he is entitled for reinstatement on the same post from which he was suspended. He contends that the Applicant had not completed normal tenure at Phaltan in view of his joining in 2016 at Phaltan Police Station. The

posting given to the Applicant at Police Head Quarter, Satara therefore amounts to transfer in contravention of provisions of Maharashtra Police Act. He, therefore, submits that the Applicant deserves to be reposted on the same post from which he was suspended.

6. Per contra, Shri A.J. Chougule, learned Presenting Officer submits that though the Applicant was exonerated in D.E. having regard to the serious nature of allegation of corruption, the Police Establishment Board (PEB), Satara posted the Applicant at Satara in public interest invoking Rule 22(N-2) of Maharashtra Police Act. He, therefore, submits that the Applicant has no legal vested right to claim same post and prayed to dismiss the O.A.

7. Needless to mention that the Government servant has no legally vested right to claim particular post or place, as the transfer is an incidence of service and it falls exclusively within the domain of executive. However, now transfers of Police Personnel are governed by the provisions contained in Maharashtra Police Act and if the transfer is found in contravention of express provision of law, then only it needs to be interfered with by the Tribunal. In other words, if transfer/posting is found in contravention of express provision of law or *malafide* or arbitrary exercise of power, in that event only, the interference is required.

8. Now turning to the facts of the present case, the Applicant was suspended by order dated 23.03.2019 on the allegation of involvement in corruption to release truck which transports sand illegally. The Applicant allegedly had conversation with one Mr. Sagar Jadhav on his mobile and demanded money. It is on this allegation, the Applicant was suspended in contemplation of D.E.

9. In pursuance of direction given by the Tribunal in O.A.460/2019, the Applicant was reinstated and posted at Police Head Quarter, Satara. The posting of Applicant at Satara Police Head Quarter was in consonance with the policy that reinstatement of the suspended employee should not be at same place. However later, in D.E, the Applicant was exonerated. It is on the basis of exoneration in D.E, the Applicant is seeking reposting at Phaltan Police Station from where he was suspended.

10. The PEB constituted at District level in its meeting dated 10.12.2019 unanimously resolved to post the Applicant the Applicant at Satara instead of giving posting at Phaltan. The minutes of PEB is at Page No.41 of P.B. The PEB in its minutes recorded that the Applicant had earlier served in Police Station Phaltan for 9 years and 6 months. Whereas, as per the learned Advocate for the Applicant, he was at Phaltan City for 7 years only i.e. from 10.06.2008 to 20.06.2015. Any way, the fact remains that the Applicant had already served for substantial period at Phaltan. This was one of the reasons for not reposting the Applicant at Phaltan. The second reason recorded by the PEB is that having regard to serious allegation made against the Applicant while suspending him, the PEB thought it inappropriate to again repost him at Phaltan Police Station. The PEB resolved that in public interest and on administrative ground, having regard to the serious allegations against the Applicant, he needs to be kept out of Phaltan Police Station, and therefore, posted him at Police Head Quarter, Satara. Needless to mention that the PEB under Section 22(N-2) of Maharashtra Police Act is empowered to transfer the Applicant, where transfer is necessitated in public interest or on administrative exigency. Accordingly, the PEB headed by Superintendent of Police, Satara invoking Rule 22(N-2) of Maharashtra Police Act and approved the posting of the Applicant at Satara thereby rejecting his claim for reposting at Phaltan Police Station. Such decision cannot

be termed as arbitrary or malafide. The PEB has specifically recorded that in public interest and on administrative exigency, the Applicant needs to be posted outside Phaltan. The PEB was required to keep in mind the impact of Applicant's continuance in Office on public and rightly considered this aspect by keeping him out of Phaltan from the point of probity in administration. This being the position, the posting of the Applicant at Satara can hardly be faulted with.

11. True, the Applicant has been exonerated in D.E. However, that itself would not invest right in Applicant so as to claim posting at Phaltan Police Station. Posting and transfer fall within the domain of executive and where it does not suffer from any arbitrariness or illegality, it need not be interfered with by the Tribunal.

12. For the aforesaid reason, I see no substance in challenge to the impugned order and O.A. deserves to be dismissed. Hence, the following order.

ORDER

The Original Application stands dismissed with no order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai
Date : 13.03.2020
Dictation taken by :
S.K. Wamanse.