

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.107 OF 2020

District : Pune

Shri Jitendra Bapurao Tupe)
Aged 45 years, Occ : Police Head)
Constable.
R/o. Chavan Nagar Police Lane, 5/3,)
Pashan Road, Pune 8.
Address for Service of Notice)
Shivam Classic, Flat No.202/A, Sec 23,)
Nerul (E), 706.)..Applicant

Versus

1. The Commissioner of Police,)
Sadhu Vaswani Road, Camp,)
Pune 411001.)...Respondents

Mrs. Vaishali Jagdale holding for Shri K.R. Jagdale, Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents.

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

DATE : 10.09.2020

J U D G M E N T

1. The Applicant has challenged the transfer order dated 25.11.2019 whereby he was transferred from Crime Branch, Pune to Head Quarter, Pune invoking jurisdiction u/s 19 of the Administrative Tribunal Act, 1985.

2. Shortly stated facts giving rise to the O.A. are as under:-

The Applicant is serving as Police Head Constable on the establishment of Respondent namely Commissioner of Police, Pune. By order dated 02.08.2017, he was transferred from Koregaon Police Station to Crime Branch. He contends that in terms of Section 22 (1)(b) of Maharashtra Police Act, he is entitled to five years tenure but he was transferred mid-term and mid-tenure by order dated 25.11.2019 by which he was again transferred to Crime Branch to Head Quarter without assigning any reason. He, therefore, contends that the impugned transfer order is unsustainable in law.

3. The Respondents resisted the O.A. by filing reply simply reiterating that the employee has no right to continue at one place and the Police Establishment Board (PEB) can transfer the police personnel in terms of Section 22(N)(2) of Maharashtra Police Act. The Respondents contends that the Applicant is transferred on administrative ground by impugned order dated 25.11.219 and prayed to dismiss the O.A.

4. Heard Smt. Vaishali Jagdale holding for Shri K.R. Jagdale, learned Counsel for the Applicant and Shri A. J. Chougule, learned Presenting Officer for the Respondent.

5. The issue posed for consideration is whether the impugned transfer order is in consonance with Section 22N(2) of Maharashtra Police Act which *inter alia* empowers the PEB to transfer the police personnel in public interest and on account of administrative exigency.

6. Indisputably, initially by order dated 02.08.2017, the Applicant was transferred from Koregaon Police Station to Crime Branch, Pune in terms of Section 22N(b) of Maharashtra Police Act, the Applicant being Police Head Constable was entitled for normal tenure for five years at one place of posting i.e. at Crime Branch. However, he has been transferred

mid-term and mid-tenure by order dated 25.11.2019. Material to note that no reason whatsoever is forthcoming for transfer of the Applicant in reply. All that it is stated in reply that the PEB can make mid-term and mid-tenure transfer for administrative ground. However what was administrative ground or exigency for the transfer of the Applicant for mid-term and mid-tenure transfer of the Applicant is not at all explained in reply. Despite specific averments in O.A. that Applicant is transferred without any reason there is no whisper in reply to show what was the ground or administrative exigency to transfer the Applicant.

7. Though, in reply it is stated that PEB approved the transfer of the Applicant, significantly, the Minutes of PEB are not forthcoming. As such, there is nothing on record to demonstrate that the PEB was actually held and transfer of the Applicant was approved in the PEB.

8. Thus, what culminates neither reason for transfer or administrative ground is forthcoming nor Minutes of PEB have seen the day of light. In terms of Rule 22N(2), the PEB can transfer the police personnel mid-term in public interest and on account of administrative exigency. Needless to mention that once the law provides for fix tenure of five years, such employee cannot be transferred unless transfer fulfills requirement of transfer in public interest or on account of administrative exigency. Indeed, the PEB is under obligation to record its reasons for such mid-term transfer to substantiate that it is in public interest and on account of administrative exigency. A police personnel cannot be transferred simply by mentioning that the transfer is on administrative exigency. Suffice to say, recording of reasons to qualify the test of public interest or administrative exigency is mandatory and it is not mere formality. However, in the present case, not a single word even for name sake is forthcoming in reply by the Respondents.

9. If the transfer of police personnel simply by mentioning that it is in administrative exigency is allowed in this manner, then it would defeat

and frustrate the very purpose of Section 22N(2), which is introduced Maharashtra Police Act in pursuance of directions of Hon'ble Supreme Court in **2006 (8) SCC 1 (Prakash Singh & Ors V/s Union of India & Ors.)**. True, the Government servant has no legal right to continue at one place and transfer is an incident of service. However, when law provides for fix tenure of five years then the Applicant could not have been transferred mid-term and mid-tenure without compliance of Section 22N(2) of Maharashtra Police Act which is completely missing in the present case. The Competent Authority has no license to act arbitrarily, it must act in the manner provided in law.

10. Perusal of impugned order reveals that three police personnel were transferred under caption 'administrative ground'. However, what was the administrative ground is in mystery. Non placing of Minutes of PEB before the Tribunal also gives rise to inference that there is no such approval of PEB.

11. Necessary corollary leads me to sum up that the impugned transfer order is in blatant violation of Section 22N(2) of Maharashtra Police Act and liable to be quashed. Hence, the following order:-

ORDER

- (A) Original Application is allowed.
- (B) Impugned transfer order dated 25.11.2019, qua applicant, is hereby quashed and set aside.
- (C) Applicant be reposted on the posts he was transferred from within two weeks from today.
- (D) No order as to costs.

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