

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1131 OF 2017

DISTRICT : MUMBAI

Shri Appasaheb Uttamrao Chavan.)
Age : 54 Yrs., Occu.: Service as Police)
Inspector, under Commissioner of Police,)
Mumbai and residing at 108/3656,)
Neharunagar Police Quarters, Kurla (E),)
Mumbai – 400 024.)**...Applicant**

Versus

The Commissioner of Police & Chairman)
of the PEB, Mumbai Police, Near Crawford)
Market, Mumbai – 400 001.)**...Respondent**

Applicant in person.

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

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 19.09.2019

JUDGMENT

1. The Applicant has challenged the impugned transfer order dated 25.11.2017 whereby he was transferred from the post of Police Inspector, Wadala Police Station, Mumbai to Police Inspector, Local Armed Police, Mumbai invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Briefly stated facts giving rise to this application are as under :-

At the relevant time, the Applicant was serving in the cadre of Police Inspector and joined as Police Inspector, Wadala Police Station on 27.05.2017. He had hardly completed six months' tenure at Wadala Police Station till the date of impugned order dated 25.11.2017. He contends that abruptly by order dated 25.11.2017 before completion of his normal tenure of two years, he was transferred to Local Armed Police Station, Mumbai in violation of provisions of Maharashtra Police Act. His transfer order was triggered in view of the incident occurred on 05.11.2017. In this behalf, he contends that on 05.11.2017, one citizen Shri Vinod Sable claiming to be the brother of complainant Smt. Anjana Shirsath along with 3/4 persons came to Police Station and made ruckus. Shri Vinod Sable allegedly threatened the Applicant asking complainant Smt. Anjana Shirsath to commit suicide in the Police Station, so as to punish the Applicant. According to the Applicant, such behavior and conduct was amounting to obstruction to Police Officer from discharging his duties. The Applicant, therefore, drafted a complaint and sent the same to Shri Parshuram Karyakarte, Senior Police Inspector, Wadala Police Station for taking action against Vinod Sable and others. However, Sr.P.I. Shri Karyakarte did not take any action. The Applicant then issued notice dated 16.11.2017 to Shri Karyakarte, Sr. P.I. to take cognizance of his complaint else he would take necessary action against him. It is on this background, without any fault on his part, he was transferred by Respondent - Commissioner of Police, Mumbai by impugned order dated 25.11.2017. The Respondent - Commissioner of Police made show of enquiry against the Applicant without giving him an opportunity of hearing. As such, the Enquiry Report submitted by Shri Kenjale, Assistant Police Inspector, Wadala is unsustainable, and therefore, the transfer based on such report (कसुरी रीपोर्ट) is illegal. The Applicant contends that he has been

victimized and transfer order is malicious and punitive. It has been issued under veil of administrative exigencies and public interest. The Applicant, therefore, contends that he has been transferred in colourable exercise of power invoking Section 22-N of Maharashtra Police Act and prayed to set aside the impugned transfer order.

3. The Respondent – Commissioner of Police resisted the application by filing Affidavit-in-reply inter-alia denying that the impugned transfer order suffers from any illegality or malicious. The Respondent sought to justify the impugned transfer order contending that during the tenure of the Applicant at Police Station, Wadala, his behavior and conduct was totally unbecoming of a Police Officer. There were several complaints about his functioning and alleged misuse of authority. On 05.11.2017, in the morning cross-complaints were registered by Bipin Sirsath and his neighbor Smt. Yadav arising out of incident of assault. That time Police Sub-Inspector Ashwini Mane who was on duty sent Smt. Yadav and Bipin Shirsath along with his mother to KEM Hospital for medical examination. Thereafter, in the noon, they again came to Police Station along with Shri Vinod Sable to settle the matter amicably and told the Applicant that they do not want to pursue the complaints lodged by them against each other in the morning and wanted to settle the matter amicably. However, the Applicant misbehaved and manhandled them. He allegedly intimidated, abused and assaulted them in Police Station. The Applicant further forcibly got documents written from them to the effect that they obstructed Police Officer discharging their duties and apologizes for the same. In that incident, Shri Vinod Sable suffered injuries and was referred to KEM Hospital for medical examination. In view of this incident, the enquiry was conducted by Shri Kajale, Assistant Police Commissioner who accordingly conducted enquiry about the said incident as well as entire conduct and behavior of the Applicant during his tenure at Walada Police Station. During enquiry, it was noticed that the Applicant was not discharging his duties

efficiently and several Memos were issued to him by Shri Karyakarte, Sr. P.I., Wadala Police Station. On completion of enquiry, he submitted Report on 16.11.2017. In view of highly deplorable conduct of the Applicant, he recommended for his transfer from Wadala Police Station. In pursuance of it, the matter was placed before Police Establishment Board (PEB) on 23.11.2017. All the members of PEB unanimously recommended for the transfer of the Applicant in public interest as well as for administrative exigencies with the observation that the conduct of the Applicant is highly deplorable and unbecoming of a Senior Officer. In pursuance of decision of PEB, the Applicant has been transferred to non-executive post as Police Inspector, Local Armed Police, Mumbai. The Respondent, thus, denied that the impugned transfer order suffers from any illegality or victimization. With this pleading, the Respondent prayed to dismiss the O.A.

4. Here, material to note that, initially, the O.A. is filed joining several Police Officials viz. Additional Director General of Police, Joint Commissioner of Police, Deputy Commissioner of Police, Assistant Commissioner of Police and Deputy Superintendent of Police as Respondent Nos.2 to 10 in their personal capacity. The Applicant has joined them in their personal capacity alleging that all these Police Officials nurtured grudge against him and were party to the decision of transfer. However, later on 21.12.2018, their names were deleted from the O.A. on the request of Applicant, when it was brought to his notice that this being transfer matter, there was no need to join Respondent Nos.2 to 10 in their personal capacity. Accordingly, the Applicant fairly conceded and their names were deleted.

5. At this juncture, it would be apposite to borne in mind the settled legal position holding the field in the matter of transfer. The following are the guiding principles laid down by the Hon'ble Supreme Court.

“i) The courts should not interfere with the transfer orders which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any statutory rule or on the grounds of malafides. (Mrs. Shilpi Bose & Ors Vs. State of Bihar & Ors. 1991 Supp, (2) SCC 659).

ii) A Government servant holding a transferable post has no vested right to remain posted at one place or the other. Transfer order issued by a Competent Authority does not violate any of his legal rights. (Shilpi Boses’s case (supra).

iii) Who should be transferred where, is a matter for the appropriate authority to decide. Unless the transfer order is vitiated by malafides and is made in violation of any statutory provisions, the court cannot interfere with it. (Union of India & Ors. Vs. S.L Abbas (1993) 4 SCC 357).

iv) Transfer of an employee is not only an incidence inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra in the law governing or conditions of service. (State of Uttar Pradesh & Ors. Vs. Gobardhan Lal (2004) 11 SCC 402).

v) Transfer made even in transgression of administrative guidelines cannot also be interfered with, as it does not confer any legality enforceable rights, unless, it is shown to be vitiated by malafides or made in violation of any statutory provision and so long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments (Gobardhan Lal’s case supra).

vi) The courts should not deal with transfer orders as if they are appellate authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. They cannot substitute their own decision in the matter of transfer for that of competent authorities of the State. Even allegations of malafides when made must be such as to inspire confidence in the court or based on concrete materials (Gobardhan Lal’s case (supra).

vii) Allegation of malafides should not be entertained on the mere making of it or on consideration borne out of conjectures of surmises. (Gobardan Lal’s case (supra).

viii) Except for strong and convincing reasons no interference could ordinarily be made with an order of transfer (Gobardhan Lal’s case (supra).”

6. In view of aforesaid legal settled position, now the question comes whether the impugned transfer order is sustainable in law and the answer is in affirmative.

7. The Applicant is conducting the proceeding in person and filed notes of argument. In addition to notes of argument, he also made oral submission reiterating the pleadings raised in the O.A. His basic contention is that he has been victimized and transferred maliciously by way of punishment without there being any fault on his part. He vehemently urged that the enquiry conducted by Shri Kejale, Assistant Police Commissioner is unfair, as no opportunity was given to him, and therefore, the decision of PEB being totally based on the कसुरी रीपोर्ट submitted by Shri Kejale is unsustainable in law.

8. Admittedly, the Applicant had not completed his normal tenure as Police Inspector, Wadala Police Station and was transferred mid-tenure. As per Section 22-N(c), the tenure of Police Officer of the rank of PSI, API and PI shall be of two years at a Police Station. However, the Competent Authority i.e. PEB is empowered to transfer the Police Personnel of the Police Force mid-term in exceptional cases, in public interest and on account of administrative exigency under Section 22-N(2) of Maharashtra Police Act, which is as follows :-

“22-N(2) 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.”

9. Now, turning to the facts of the present case, perusal of the record reveals that in view of incident occurred on 05.11.2017 in Wadala Police Station, an enquiry was conducted by Shri Anant Kejale, Assistant Police Commissioner, Wadala Division and on completion of enquiry, submitted report dated 16.11.2017 to Deputy Police Commissioner – Dr. Rashmi Karandikar. In turn, the Deputy Commissioner of Police with her own recommendation of transfer forwarded the report to Additional Commissioner of Police for necessary action. Shri Anant Kejale in his report (Page Nos.119 to 124 of P.B.) held that on 05.11.2017, the Applicant manhandled,

abused and assaulted Vinod Sable and his companion Santosh Pawar and detained them in Police Station for two and half hours and forcibly obtained Mafinama (माफीनामा) from them. Shri Kejale, therefore, opined that the Applicant has misused his position and acted in highly deplorable manner and his continuation in Wadala Police Station was likely to create further problem of law and order. Shri Anant Kejale further held that there were several complaints about the behavior of the Applicant during his tenure at Wadala Police Station and over-all behavior and attitude of the Applicant was rude and even he was treating juniors badly. In this behalf, he had also annexed several Memos issued to the Applicant by Shri Karyakarte, Sr. Police Inspector, Wadala Police Station which are at Page Nos.127 to 137 of P.B, which was not replied by the Applicant. Shri Kejale, therefore, concluded that the Applicant was required to be shifted from Wadala Police Station in public interest and for administrative discipline in the Department.

10. The matter along with report of Shri Kejale was placed before PEB consists of 7 Members in the rank from Deputy Police Commissioner to Police Commissioner. They unanimously recorded that the default are of grave and serious nature and the conduct as well as behavior of the Applicant is highly deplorable and unbecoming of a senior Officer. Therefore, unanimously resolved to transfer the Applicant to non-executive post in the public interest. Thus, continuing the Applicant at Wadala Police Station found subverting and affecting the discipline in the Department.

11. As such, the CSB who is the Competent Authority recorded their subjective satisfaction in view of comprehensive default report submitted by Shri Kejale. True, in that enquiry, the Applicant was not heard. However, that cannot be the ground to vitiate the transfer order for the simple reason that it was preliminary enquiry. The CSB has categorically noted that the conduct of the Applicant is highly

deplorable and unbecoming of a senior Police Officer, and therefore, in public interest and for administrative exigency, transferred the Applicant to non-executive post was imperative. This being the position, the impugned transfer order cannot be termed malicious or arbitrary. The CSB recorded elaborate reasons justifying the transfer. Needless to mention whether the reasons weighed with the authority for arriving at subject to satisfaction would qualify it as an exceptional circumstance or public interest always depend upon the facts of each case and it cannot be reduced into strait-jacket formula. It is well settled that the administrative exigency needs to be understood in service jurisprudence from the point of interest of administration. In the present case, the PEB in its wisdom on the over-all assessment of the situation have taken decision, and therefore, such decision cannot be substituted or interfered with by the Tribunal. The transfer of public servant can be interfered with where it is in violation of express provision of law or the same is *malafide*. In the present case, except bare allegation, the Applicant could not point out how the impugned transfer order suffers from malice. The Members of PEB have no axe to grind against the Applicant and nothing to suggest that they have anything to nurture bias against the Applicant. Their decision is based upon the Enquiry Report of Shri Kejale, which is the report of fact finding preliminary enquiry. I, therefore, see no reason to interfere in the impugned transfer order.

12. At this juncture, it would be apposite to refer the decision of Hon'ble Supreme Court in ***Civil Appeal No.1010-1011 of 2004 (Union of India Vs. Sri Janardhan Debanath & Anr., decided on 13.02.2004)*** wherein it has been observed as follows :-

“12. The allegations made against the respondents are of serious nature, and the conduct attributed is certainly unbecoming. Whether there was any mis-behaviour is a question which can be gone into in a departmental proceeding. For the purposes of effecting a transfer, the question of holding an enquiry to find out whether there was mis-

behaviour or conduct unbecoming of an employee is unnecessary and what is needed is the prima facie satisfaction of the authority concerned on the contemporary reports about the occurrence complained of and if the requirement, as submitted by learned counsel for the respondents, of holding an elaborate enquiry is to be insisted upon the very purpose of transferring an employee in public interest or exigencies of administration to enforce decorum and ensure probity would get frustrated. The question whether respondents could be transferred to a different division is a matter for the employer to consider depending upon the administrative necessities and the extent of solution for the problems faced by the administration. It is not for this Court to direct one way or the other. The judgment of the High Court is clearly indefensible and is set aside. The Writ Petitions filed before the High Court deserve to be dismissed which we direct. The appeals are allowed with no order as to costs.”

13. As such, in view of the legal principle enunciated by Hon’ble Supreme Court in **Janardhan Debanath’s** case (cited supra), it would be inappropriate to insist for holding an elaborate enquiry for the purpose of transfer where his immediate transfer is warranted in public interest or exigencies of administration.

14. The totality of aforesaid discussion leads me to conclude that the challenge to the impugned transfer order holds no water and O.A. deserves to be dismissed. Hence, the following order.

ORDER

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

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

Mumbai
Date : 19.09.2019
Dictation taken by :
S.K. Wamanse.