

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 1187 of 2022 (S.B.)

Anil S/o Narayanrao Kuralkar,
aged about 52 years, Occupation: Service (Police Inspector),
R/o Vaibhav colony, Old bye pass road,
Amravati, Tah. & Dist. Amravati.

Applicant.

Versus

- 1) The State of Maharashtra,
through it's Additional Chief Secretary,
Home Department, Mantralaya, Mumbai- 32.
- 2) The Commissioner of Police,
Amravati City, Near Maltekadi, Amravati,
Tah. & Dist Amravati.
- 3) Shri. Gorakhnath Ramnath Jadhav,
Aged about adult, Occupation : Service (Police Inspector),
R/o 0/0 Police Station Faizarpur, Amravati

Respondents.

Shri S.N. Gaikwad, Advocate for the applicant.

Shri V.A. Kulkarni, learned P.O. for respondent nos.1&2.

None for respondent no.3.

**Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.**

Dated :- 22/06/2023.

JUDGMENT

Heard Shri S.N. Gaikwad, learned counsel for the applicant and Shri V.A. Kulkarni, learned P.O. for respondent nos.1 and 2. None for respondent no.3.

2. The applicant has challenged the impugned transfer order dated 12/11/2022. It is the case of the applicant that he is frequently transferred by the respondents without any reason. He had obeyed the earlier transfer orders, but the impugned transfer order is challenged by the applicant on the ground that without any reason, he is frequently transferred before completion of his normal tenure, hence prayed to quash and set aside the impugned transfer order.

3. The O.A. is opposed by the respondents. It is submitted that the respondent authority is empowered to transfer the applicant on the administrative ground. The transfer of the applicant was recommended by the Police Establishment Board and therefore as per the recommendation of the Police Establishment Board, the applicant is transferred and hence the O.A. is liable to be dismissed.

4. During the course of argument, learned counsel for the applicant has pointed out the Section 22N of the Maharashtra Police Act. The proviso of Section 22N is as follows –

“ Provided that, the State Government may transfer any Police Personnel prior to the completion of his normal tenure, if,-

(a) disciplinary proceedings are instituted or contemplated against the Police Personnel; or

(b) the Police Personnel is convicted by a court of law; or

(c) there are allegations of corruption against the Police Personnel; or

(d) the Police Personnel is otherwise incapacitated from discharging his responsibility; or

(e) the Police Personnel is guilty of dereliction of duty.”

5. The case of the applicant is not covered in any of the provisions of proviso of (a) to (e) of the Section 22N of the Maharashtra Police Act. Even the applicant is transferred frequently. The copy of the decision of the Police Establishment Board is filed on record. It is marked Exh-X. As per this report of Police Establishment Board, no any reason was given to transfer the applicant frequently. Only reason is recorded that as per the recommendation of the Police Establishment Board, the applicant is transferred. The frequent transfer orders are filed on record. On 30/10/2020, the applicant was transferred from Amravati to Police Station, Nandgaon Peth. On 24/07/2021, he was transferred from Nandgaon Peth to Court Monitoring Cell (CMC), Amravati City. As per the order dated 18/08/2021, he was transferred from Court Monitoring Cell (CMC) to Traffic Cell. As per the order dated 24/01/2022, the applicant was transferred from Traffic Cell to Police Station, Faizarpura. Thereafter, lastly by impugned order he is transferred from Police Station, Faizarpura to Special Branch, Amravati City. It appears that the applicant is frequently transferred.

6. The learned counsel for the applicant has pointed out the decision of the Hon'ble Supreme Court in the case of **T.S.R. Subramanian and ors. Vs. Union of India and ors.** In para-35, the Hon'ble Supreme Court has recorded the following findings –

“35. We notice, at present the civil servants are not having stability of tenure, particularly in the State Governments where transfers and postings are made frequently, at the whims and fancies of the executive head for political and other considerations and not in public interest. The necessity of minimum tenure has been endorsed and implemented by the Union Government. In fact, we notice, almost 13 States have accepted the necessity of a minimum tenure for civil servants. Fixed minimum tenure would not only enable the civil servants to achieve their professional targets, but also help them to function as effective instruments of public policy. Repeated shuffling/transfer of the officers is deleterious to good governance. Minimum assured service tenure ensures efficient service delivery and also increased efficiency. They can also prioritise various social and economic measures intended to implement for the poor and marginalised sections of the society.”

7. The learned counsel for the applicant has pointed out the decision of Hon'ble Madras High Court in the case of **M. Kandasami Vs. Tamil Nadu Electricity Board.** The Hon'ble Madras High Court has held that frequent transfer without sufficient cause amounts to malafide transfer.

8. In the present matter, without any reason the applicant is transferred intermittently. Frequent transfer of the applicant appears to be malafide, because, there is no any reason recorded in the report of the Police Establishment Board, only it is mentioned as recommendation of transfer, but no any reason is stated in the decision of the Police Establishment Board. Hence, the impugned transfer order appears to be malafide and therefore it is liable to be quashed and set aside. Hence, the following order –

ORDER

(i) The O.A. is allowed.

(ii) The impugned transfer order dated 12/11/2022 is hereby quashed and set aside.

(iii) No order as to costs.

Dated :- 22/06/2023.

dnk.

(Justice M.G. Giratkar)
Vice Chairman.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 22/06/2023.