

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 191 OF 2015

DISTRICT : PUNE

Shri Narayan Mohan Sarangkar)
Occ : Police Inspector,)
Paud Police Station, Pune)
And transferred to Control.Room)
Pune.)
R/o: Aranyeshwar Park,)
Sahakar Nagar, Pune.)
Add for service of notice:)
Shri A.V. Bandiwadekar,)
Advocate, having office at 9,)
"Ram Kripa", Lt Dilip Gupte Marg,)
Mahim, Mumbai 400 016.)...**Applicant**

Versus

1. The Superintendent of Police,)
Pune [Rural],)

2. The State of Maharashtra,)
Through Principal Secretary,)
Home Department, Mantralaya,)
Mumbai 400 032.)...**Respondents**

Shri A.V Banidwadekar, learned advocate for the Applicant.

Shri K.B. Bhise, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

DATE : 26.10.2015

ORDER

1. Heard Shri A.V Banidwadekar, learned advocate for the Applicant and Shri K.B. Bhise, learned Presenting Officer for the Respondents.
2. This Original Application has been filed by the Applicant challenging his transfer from Paud Police Station, Pune (Rural) to Control Room, Pune by order dated 5.3.2015.
3. Facts of the case in brief are as follows:-
The Applicant was promoted as Police Inspector (P.I) by the Director General of Police,

Maharashtra State, by order dated 2.8.2013. He was posted at Police Control Room, Pune. By order dated 19.8.2013 issued by the Respondent no. 1, the Applicant was given additional charge of Loni Kalbhor Police Station. By order dated 30.11.2013, the Applicant was given regular charge of the Police Station, Shirur. This order was changed and by order dated 2.12.2013, the Applicant was posted as Police Inspector, Local Crime Branch (Economic Offences Wing), Pune. He was given additional charge of Shirur Police Station. By order dated 30.6.2014, the posting of the applicant in Local Crime Branch was cancelled. He was posted as Police Inspector, Solapur National Highways Traffic Division at Yewat and also given charge of Yewat Police Station. By order dated 5.12.2014, the Applicant was given additional charge of Paud Police Station. By impugned order dated 5.3.2015, additional charge of Paud Police Station was withdrawn from the Applicant and he was posted to Police Control Room, Pune. This order is challenged by the Applicant.

4. Learned Counsel for the Applicant argued that the Applicant was posted as In-charge of Paud Police Station on 4.12.2014. He has been transferred to Police Control Room, Pune by impugned order dated 5.3.2015, after three months, though he was entitled to a tenure of 2 years as section 22N of the Maharashtra Police Act, 1951 provides for normal tenure of a Police Inspector of two years at a Police Station or Branch. For transfer of

Police Personnel upto the rank of Police Inspector within the District, the Competent Authority is Police Establishment Board at district level. However, the Applicant was transferred before completion of his term and on the basis of a default report. Learned Counsel for the Applicant contended that transfer of the Applicant is covered under clause (a) - contemplated disciplinary proceedings or (e) guilty of dereliction of duty under proviso to section 22(N)(1). In such circumstances, transfer could be effected only with the approval of 'Competent Authority' who is 'Home Minister'. The power of 'Competent Authority' has not been delegated to the Respondent no. 1 and therefore, the order passed by him transferring the Applicant after 3 months is totally without competence. Learned Counsel for the Applicant stated that temporary posting etc., have no place in Maharashtra Police Act. The Applicant was drawing his pay and allowances from Paud Police Station. His posting at Paud Police Station has to be treated as a regular posting and his transfer after 3 months from Paud to Control Room, Pune is clearly mid term transfer and it required approval of the 'Competent Authority' under Section 22(N) and as no approval was taken from the Competent Authority, the transfer order is bad in law and may be quashed. Learned Counsel for the Applicant cited various judgment in support of his claim.

5. Learned Presenting Officer (P.O) argued on behalf of the Respondents, that the Applicant was not given a posting at Paud Police Station on a regular basis. He was only given additional charge of that post. The Applicant was posted as Police Inspector, Solapur National Highway Traffic Division at Yewat and was given charge of Yewat Police Station by order dated 30.6.2014. As the post of Police Inspector at Paud Police Station was vacant, the work of that Police Station Paud was entrusted to the Applicant as a Stop-gap arrangement. During the period when the Applicant was holding additional charge of the post of Police Inspector at Paud Police Station, the Applicant, with the intention to help a MOCCA accused in C.R no 239/2015 u/s 302 of IPC, registered a false case against the complainants and witnesses in that case [C.R no 31/2015 u/s 399, 402 of IPC]. This fact came out in an inquiry conducted by the Additional Superintendent of Police, Pune, who submitted his report on 18.2.2015 to the Respondent No. 1. The Respondent no. 1, withdrew the additional charge of Paud Police Station entrusted to the Applicant. Learned Presenting Officer argued that there were some newspaper reports criticizing the withdrawal of additional charge of Paud Police Station from the Applicant. However, looking into the seriousness of misconduct of the Applicant, there was no other option available to the Respondent no. 1. Learned Presenting Officer argued that if the Applicant is posted back to the Paud Police

Station, there is likelihood that he will interfere with the investigation in C.R no 239/2015 registered under section 302 of I.P.C and provision of MOCCA. Learned Presenting Officer stated that the Applicant has rightly been posted at the Police Control Room and that the cases cited by the Applicant are not applicable in the present case.

6. It is seen that the Applicant was promoted as Police Inspector by the Director General of Police, Maharashtra State, by order dated 2.8.2013 and posted on the establishment of the Respondent no. 1. The first order giving posting to the Applicant is dated 19.8.2013 and the Applicant was given temporary charge as Police Inspector of Loni Kalbhor Police Station. The Applicant was given regular charge of the post of Police Inspector, Shirur Police Station by order dated 30.11.2013. This order was modified by order dated 2.12.2013 and the Applicant was given regular posting as Police Inspector, Local Crime Branch (Economic Offence Wing) and the charge of the post of Police Inspector, Shirur Police Station was given to him as an additional charge. These orders were issued before Maharashtra Police (Amendment) Ordinance 2014 (Mah. Ord. III of 2014) was promulgated on 1.2.2014. The Applicant did not raise any grievance about these orders.

7. By order dated 30.6.2014, the Respondent no. 1, cancelled the order posting the Applicant as Police Inspector, Local Crime Branch, Pune and posted him as Police Inspector, Solapur National Highway Traffic Division at Yewat. The Applicant was given additional charge of the post of Police Inspector, Yewat Police Station. Though in effect, this order transferred the Applicant from Shirur Police Station, to Yewat Police Station within a period of about 7 months, the Applicant did not challenge the said order. By order dated 5.12.2014, the Applicant was given additional charge as Police Inspector, Paud Police Station. His regular posting remained at Yewat as Police Inspector, Solapur National Highway Traffic Division. The Applicant claims that he was transferred to Paud Police Station on regular basis. Two reasons are advanced in support of this contention, viz:-

(i) It was not possible to hold the charge of Police Inspector, National Highway Traffic Division at Yewat, simultaneously with the charge of Police Inspector, Paud Police Station, which are at a distance of more than 100 kms.

(ii) The Applicant was drawing his salary from Police Station, Paud.

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It is difficult to accept the contentions of the Applicant in this regard. It is true that he was given charge of one Police Station for a short period, and then given charge of another Police Station. For his own reasons, the Applicant never challenged frequent orders of additional charge given to him by the Respondent no. 1. There is nothing on record to suggest that he ever brought it to the notice of the Respondent no. 1 that as Police Inspector, Paud Police Station, it was not possible for him to hold simultaneous charge of Police Inspector, National Highway Traffic Division at Yewat. The Applicant is challenging withdrawal of additional charge of Paud Police Station, which was given to him. He claims that he did excellent work in investigating crime registered as C.R no 239 of 2014 under Section 302 IPC and 40 MOCCA. He also claims that citizens of Mulshi Taluka (where Paud Police Station is located) protested against his transfer from Paud to Control Room in Pune. Though the Applicant claims in para 6.5 of Original Application that he did outstanding work in investigation C.R no 239 of 2014, the Respondent no. 1 in his affidavit in reply dated 2.6.2015 has stated that in para 6.1 that the Applicant deliberately registered a false case, C.R no 31/2015 to derail the investigation in C.R no 230/2014. The whole matter was investigated by Additional Superintendent of Police, Pune, who submitted report dated 18.2.2015 to the Respondent no. 1. It is mentioned that:

“ एकंदरीत, पो.नि. सारंगकर यांनी पौड पोलीस स्टेशन येथे तात्पुरत्या नेमणुकीस असताना पौड पो.स्टे. मध्ये दाखल गु.रं.नं.239/14 भादविक 302 वगैरे महाराष्ट्र संघटीत गुन्हेगारी नियंत्रण अधिनियम 1999 या गुन्हातील टोली प्रमुख गजानन माराठे व इतर साक्षीदार यांचे विरुद्ध फिर्याद दिलेल्या फिर्यादी निलेश ज्ञानोबा जाधव व सदर गुन्हातील एकमेव प्रत्यक्षदर्शी साक्षीदार नामे मनोज देवराम भिलारे यांचे विरुद्ध संशयास्पदरित्या बनाव करून दरोड्याच्या तयारी सारखा गंभीर गुन्हा दाखल करून त्यांनी दाखल केलेल्या गुन्हातील सरकारतर्फे फिर्यादी व पोलीस साक्षीदार हे प्रत्यक्ष घटनास्थळी उपस्थित नसताना देखील ते घटनास्थळी उपस्थित असल्याचे भासवून मोळक्यातील फिर्यादी निलेश व प्रत्यक्षदर्शी साक्षीदार मनोज व इतर यांचे विरुद्ध बनावट (Fabricated) गुन्हा दाखल केला.”

Learned Counsel for the Applicant argued that the Additional Superintendent of Police, Pune was prejudiced against the Applicant and hence gave the aforesaid report. It is difficult to accept this contention made on behalf of the Applicant. Additional S.P has given a detailed and exhaustive report dated 18.2.2105, running into 25 pages and 30 pages of supporting documents. There is no reason why a senior Officer like Additional S.P will give a false report against a subordinate Officer. After receipt of this report, the Respondent no. 1 had no option but to withdraw additional charge of Police Station, Paud from the Applicant.

The Applicant was never posted on a regular basis to Paud Police Station, but was only given additional charge. The action of withdrawing additional charge of Police Station, Paud from the Applicant in the wake of

default report was well within the powers of the Respondent no. 1.

8. It is seen that the regular posting of the Applicant was Police Inspector, National Highway Traffic Division at Yewat, where he was posted by order dated 30.6.2014. By order dated 5.3.2015, the Applicant has been transferred to Police Control Room, Pune. The issue to be decided is whether this Transfer is legal or not. As per section 22N(1)(c), for Police Officers of the rank of Police Sub-Inspector, Assistant Police Inspector and Police Inspector, a normal tenure shall be of two years at a Police Station or Branch. The Applicant had not completed his tenure of two years as Police Inspector, National Highway Traffic Division, at Yewat, when order dated 5.3.2015 was issued. As per section 2(6B), it was a 'mid-term' transfer also as it was not done in the month of April or May. As per section 22N(1), the Competent Authority for the general transfer for Officers up to Police Inspector is Police Establishment Board at District level. It is clear that the Superintendent of Police is not the Competent Authority for transfer of Officers up to Police Inspector. For 'general transfers', it is the Police Establishment Board at District level, after the Maharashtra Ordinance No. II of 2015 was promulgated on 16.2.2015. Impugned order is dated 5.3.2015. For 'mid-term' transfers the Competent Authority under section 22N(2) is Police Establishment Board at District

level for transfers within the District. These transfers can be made on the grounds mentioned in section 22N(1) and in addition, in exceptional cases, in public interest and on account of administrative exigencies. In case of 'mid-tenure' transfer (though this phrase is not defined in the Act), the transfers can be made only by the State Government on the grounds mentioned in section 22N(1). The transfer of the Applicant was both 'mid-term' and 'mid-tenure'. For 'mid-term' transfer, approval of Police Establishment Board at District level was required as 'Competent Authority'. For 'mid-tenure' transfer, approval of State Government was necessary. In the present case, approval of neither the State Government nor the Competent Authority (Police Establishment Board at District level) was obtained. As such, the aforesaid transfer order cannot be sustained.

9. Learned Counsel for the Applicant has cited various judgments of Hon. Bombay High Court and this Tribunal that mere existence of a complaint cannot be a ground for transfer. In the present case, there was a report of a senior officer about the interference by the Applicant in investigation of a serious crime. On the basis of that report, the action of the Respondent no. 1 in withdrawing additional charge of the post of Police Inspector, Paud Police Station has been upheld. As regards transfer of the Applicant from his regular post of Police Inspector, National, Highway Traffic Division at

Yewat to Police Control Room is concerned, it is concluded that the Respondent no. 1 was not competent to issue transfer order as he is not empowered to do so under section 22-N of the Maharashtra Police Act. It is not necessary to delve further in the judgments cited by the Applicant.

10. Having regard to the aforesaid facts and circumstances of the case, impugned order dated 5.3.2015 issued by the Respondent no. 1 is quashed and set aside only to the extent of transferring the Applicant as Police Inspector, Police Control Room, Pune. The Applicant may be posted back to his regular post as Police Inspector, National Highway Traffic Division, Yewat within four weeks from the date of this order. The Original Application is disposed of accordingly with no order as to costs.

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai

Date : 26.10.2015

Dictation taken by : A.K. Nair.