

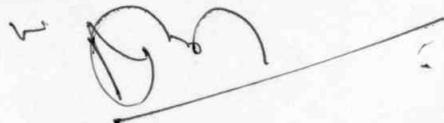
**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.20 & 55 OF 2016

DISTRICT : THANE

ORIGINAL APPLICATION NO.20 OF 2016

1. Shri Vijay S. Baharwal.)
Age : 35 Yrs, Occu. Sr. Clerk,)
Having Office at Traffic Head Quarter)
Worli, Mumbai and Residing at)
Renuka, B-16, 503, Kapase Colony,)
Ramabai Ambedkar Nagar,)
Ghatkopar (E), Mumbai.)
2. Shri Deepak B. Jadhav.)
Age : 34 Yrs, Occu. Sr. Clerk,)
Having Office at Commissioner of)
Police, Greater Mumbai and Residing)
at C/o. Arun Gaikwad, 219, New)
Bhendipada, Kalyan-Badlapur Road,)
Ambernath (W), Dist : Thane.)
3. Shri Bhushankumar G. Sarode.)
Age : 30 Yrs, Occu. Sr. Clerk,)
Having Office at Commissioner of)
Police, Mumbai Local Armed Police,)
Worli, Mumbai and residing at)
Room No.49, 1st Floor, Old Byculla)
Police Quarter, Byculla (E), Mumbai.)
4. Shri Rajesh Ramnath Sanai.)
Age : 33 Yrs, Occu. Sr. Clerk,)



- Having Office at Commissioner of)
 Police, D.N. Road, Mumbai and)
 Residing at Room No.14, Building)
 No.4, Aptewadi, Badlapur (E),)
 Dist : Thane.)
5. Shri Ajaykumar W. Gawande.)
 Age : 41 Yrs, Occu. Jr. Clerk,)
 Having Office at Commissioner of)
 Police, L.T. Marg, Mumbai and)
 Residing at Room No.23, MHADA)
 Colony, Near Surya Shopping Centre)
 Mira Road, Dist : Thane.)
6. Shri Pradeep Atmaram Daive.)
 Age : 32 Yrs, Occu. Jr. Clerk,)
 Having Office at Commissioner of)
 Police, Opp. Crawford Market,)
 D.N. Road, Mumbai and)
 Residing at Room No.115, 'B' Block,)
 MRA Police Station Quarters,)
 Mumbai.)
7. Shri Anil Tulshiram Hake.)
 Age : 39 Yrs, Occu. Sr. Clerk,)
 Having Office at Commissioner of)
 Police, D.N. Road, Mumbai and)
 Residing at 'B' Building, Room No.28)
 Water Police Line, Fort, Mumbai.)...Applicants

Versus

1. The Director General & Inspector)
 General of Police, M.S, Mumbai and)
 having office at Old Council Hall,)
 Shahid Bhagatsingh Marg,)
 Mumbai 400 039.)
2. The Commissioner of Police, Mumbai)
 Having office at Mumbai Police)
 Commissionerate, L.T. Marg,)



Opp. Crawford Market, Fort,)
Mumbai 400 001.)

3. The State of Maharashtra.)
Through the Principal Secretary,)
Home Department, Mantralaya,)
Mumbai - 400 032.)...Respondents

WITH

ORIGINAL APPLICATION NO. 55 OF 2016

Shri Vijaysinh Popatrao Kashid.)
Age : 35 Yrs, Occu. Jr. Clerk in the office)
of Additional Commissioner of)
Police, South Region, Nagpada,)
Mumbai - 8 and Residing at Mahalaxmi)
C.H.S, Building No.A-2, 2nd Floor,)
Room No.7, Sector 16, Nerul, Navi)
Mumbai.)...Applicant

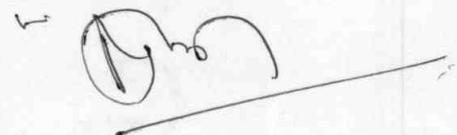
Versus

1. The Director General & Inspector)
General of Police, M.S, Mumbai & 2)
Ors.)...Respondents

Shri A.V. Bandiwadekar, Advocate for Applicants.

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

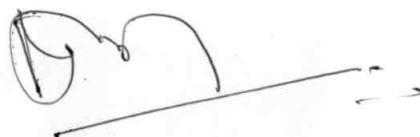
P.C. : R.B. MALIK (MEMBER-JUDICIAL)



DATE : 24.08.2016

JUDGMENT

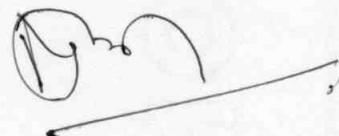
1. These two Original Applications (OAs) on identical facts can be and are being hereby disposed of by this common Judgment.
2. The Applicants are in the clerical cadre working in different Police Establishments. Their request for inter-district transfers came to be not accepted aggrieved whereby, they are up before me by way of these OAs.
3. I have perused the record and proceedings and heard Mr. A.V. Bandiwadekar, the learned Advocate for the Applicants and Smt. K.S. Gaikwad, the learned Presenting Officer for the Respondents.
4. The Applicants seek entitlement to be posted by way of inter-district transfer to the place of their choices. It may not be highly significant but it appears that most of them namely the 7 Applicants in the 1st OA and the sole Applicant in the second one want posting in their home town. Their request came to be rejected vide Exh. 'B' (Page 20 of the Paper Book (P.B)). One of the Applicants Mr. Anil T. Hake's application was rejected apparently on the



ground that he had not completed five years of service at the place of his present posting. It needs to be noted that those who had sought for such transfers outside the cadre or inter-district and whose applications were rejected, could apply again next year through the 2nd Respondent - Commissioner of Police, Mumbai or his counterpart.

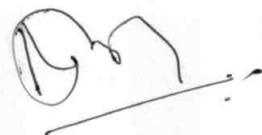
5. The 1st Respondent is the Director General and Inspector General of Police and the 3rd Respondent is the State of Maharashtra through Principal Secretary, Home. It was warned through Exh. 'B' that the applications should not be directed submitted to the Director General of Police. No political influence should be brought to bear upon in this particular matter. The rationale of the matter is that there have to be comments or remarks of the authority holding the post of Respondent No.2.

6. The Applicants have set out the details of how they were entitled to get their request accepted and how at least a few similarly placed employees were granted the same relief which was refused to the Applicants, thereby attracting the wrath of the rule against hostile discrimination. As I mentioned, a few instances in that behalf have been quoted. The approach of the authority is branded as arbitrary and hostile, etc.

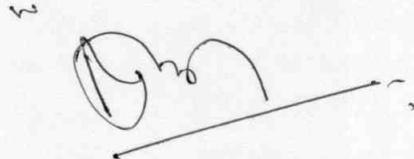


7. The Respondents by the Affidavit-in-reply have denied the claim. In fact, it appears that the case of the Applicant Shri Vijay Baharwal was recommended by the Respondent No.2 but was apparently not accepted by the Respondent No.1. The details have been furnished as to how and why while the cases of a few of the Police Personnel were favourably considered, the case of all of them could not be considered. As per the directions of the Hon'ble Chairman, the top-most Police authority Mrs. Archana Tyagi, Special Inspector General of Police filed an Affidavit-in-reply on behalf of 1st Respondent. As the discussion progresses, I shall, to the extent necessary discuss the case of both the sides including the Respondents.

8. Now, although the Applicants have referred to a G.R. of 21st April, 2982, I find that it is the G.R. of 3rd June, 2011 (2011 G.R.) that would be relevant for the purposes hereof. Therein there are four references, the 1st one being 1982 G.R. above referred to, the second one being another G.R. of 14th March, 1988, third one being the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 and another one, a G.R. of 7.6.2006. It is



mentioned in the 2011 G.R. that by the last mentioned G.R, all the earlier G.Rs were rescinded. It is then mentioned that the Rules will have to be framed under the Transfer Act, but that would take some time and in the meanwhile, as a result of the 2006 G.R, the earlier G.Rs governing such subject pertaining to the MPSC appointed candidates and female personnel had been repealed, and therefore, in as much as the requests were being received and representations made, the terms and conditions for inter-district and inter-cadre transfers would be in accordance with the 2011 G.R. There are in all 12 conditions. The G.R. is in Marathi. The 1st condition is that such transfers would be made on equivalent post and in exceptional circumstances, they could be made on the post carrying the same pay band and grade pay. Whenever technical knowledge or qualification is necessary, in such matters, separate procedure would be adopted and thereunder such transfers would not be made. The 2nd condition was that the concerned employee must be regular employee with a certificate in that behalf. The 3rd condition was that such applicant completes 5 years of service and in certain exceptional circumstances, this period could be reduced to three years. Now, at this stage itself, it may be mentioned that I was told at the Bar that except the Applicant Shri Hake who at the time of filing of



the OA had not completed 5 years but who may have completed it now, all others had completed 5 years in their posts.

9. Retuning to the 2011 G.R, the said transfers could be made under the same controlling authority that is district or divisional, as the case may be. The 5th condition was that the transfers would be effected taking into consideration the interest of administration and public. The authorities at both the places that is place of present posting and the place where transfer is sought must give No Objection Certificate. The 6th condition was that the place where transfers are sought should be vacant and the vacancy must be from the same source that the concerned employee was drawn from namely promotee or nominee, etc. The 7th condition was that if the requirement was to pass some departmental examinations at the place where transfer was sought, that condition would have to be complied with. The 8th condition was about fixation of seniority at the new place and pay fixation, etc. The 9th condition was in effect that the transferred employee will have to join at his own cost. The 10th condition was that if the post concerned were within the purview of the MPSC, then their approval would be necessary. The 11th condition was that the said employee must give an undertaking of

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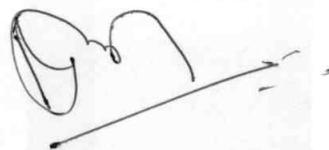
accepting of terms and conditions and the last condition was that the authorities named in the Transfer Act would be the competent authority in these matters.

10. It is very clear that all the Applicants are MPSC selected candidates. They have put in, as already mentioned above, more than 5 years at their present postings and now the issue of their inter-district or inter-cadre transfer would be governed by 2011 G.R. above discussed. I must make it very clear at the outset that this is not an instance of first appointment or the transfers strictly governed by the Transfer Act. This is an instance of the transfers governed by the 2011 G.R. Therefore, except for the said G.R, there is no other source of guidance and if one remains within the confines thereof, then the elementary principles of administrative law with regard to the jurisdictional limitations of the adjudicators will have to be borne in mind. In so far as this aspect of the matter is concerned, the judicial authority will have to examine the record to find out as to whether the Applicants have been treated fairly, justly and in accordance with the principles of natural justice such as it is applicable in the context. If the judicial forum finds it to be so, then it would not just for the asking substitute its own conclusions for the conclusions drawn by the

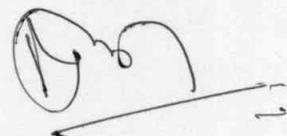


authorities below. However, equally true is the fact that the Constitution of India is above every other law and instrument. The basic constitutional guarantee against hostile discrimination shall be applicable even to such matters and if it is found that there was hostility impermissible by constitution that is reflected on record on the part of the State, then there will be no question of any other consideration except for the Tribunal to strike it down and make an appropriate order. This is the parameter which one has to work within.

11. Now, turning to the facts in the above background, the Applicants have submitted a chart to show the reasons given by the various Applicants in seeking the said transfers. The columns are - Serial Number, Name, Post, Source, Date of Appointment, Whether 5 years' service is complete, Whether departmental examinations have been passed and Whether certificate of regular appointment was there. The next column was a little broader one in which the information about the remarks of the 2nd Respondent were made. And the last column is of the reason for transfer. Now, it is not necessary to read the reasons of each and every Applicant. Broadly so speaking, the reasons are aged and infirm and in some cases, ailing parents. In some cases, it is for

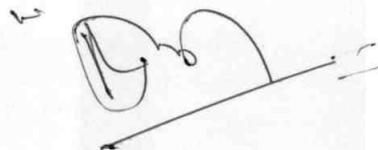


getting united with the serving spouse at the place where transfer was sought and or to look after the small kids. By and large, the cause was to look after the aged parents. The Applicants from pages 47 onwards have quoted instances of their colleagues whose similar requests came to be granted. They are Ms. L.K. Amodkar, Ms. P.P. Bhangre, Mr. B.S. Dhangar, Ms. V.S. Pisal, Ms. M.V. Borkar, Ku. M.V. Bhingarkar, Ms. T.E. Palve in whose case, in fact, the condition of the certificate described as, "स्थाइत्व प्रमाणपत्राची अट" was also relaxed. The Applicants have heavily relied upon these documents to contend that there has been discrimination in as much as even those Police Personnel also had the same problem to contend with such as the Applicants and the reasons were also the same. But still, while their case was favourably considered, the case of the present Applicants were not favourably considered. The Respondents have by and large not disputed that the request of a few of the Police Personnel for such transfers came to be accepted while in case of others, they were not and this group included the present Applicants. I would in this behalf closely read the Affidavit of Smt. Archana Tyagi above referred to. According to her, those named above who were transferred were for the duration of 17.12.2009 and 6.2.2014. Two out of the 7 cases were made by the Government and 5 by her Office. In case of one such

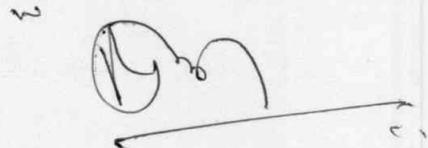


employee Mr. Amodkar, the decision was taken in 2009 to which G.R. of 2011 would not apply. According to her, the reasons in their cases were grave and genuine. According to her, the present Applicants did not fulfill the required criteria and in case of Applicant Beharwal, though recommended by the Respondent No.2, he was not accommodated because of want of vacancy and in that behalf, she has relied upon a letter of the Commissioner of Police, Nashik City. She has reiterated that the case of those whose requests were accepted and the case of the Applicant were distinguishable. In Para 2.6, she has mentioned *inter-alia* that as many as 115 Clerks including the Applicants got their request rejected and it is not as if the Applicants were singled out. She has claimed that there is no hostile discrimination at all between the Applicants and others. In Annexure (Exh. 'R-2'), she has given the details of the reasons, why the applications of those other candidates came to be accepted. Now, it is not necessary for me to set out all those details herein, but it appears that except for one, all the others are ladies and they had those domestic problems which are in the manner of speaking common knowledge.

12. Mr. Bandiwadekar, the learned Advocate for the Applicants places on record a document to show that at



least in case of three Applicants, no objection had been received from the receiving authorities. That, however, will be only one aspect of the matter and in the present set of facts, would not be able to tilt the balance decisively. He referred me to an unreported Judgment of the Division Bench of the Hon'ble Bombay High Court in **Writ Petition No.9051/2013 (The State of Maharashtra Vs. Smt. Meena A. Kuwalekar, dated 28th April, 2016)**. He has relied upon this particular authority mainly for the proposition that there shall be no pick and choose policy practised by the Government in dealing with their employees and on the facts therein, it was found that the action of the Government in challenging some orders in some matters and not doing so in others, could not pass muster with the judicial test. I must make it very clear that I have carefully borne this principle in mind. However, when a large number of Applicants is there and all of them cannot be accommodated, then the judicial forum will have to carefully examine the matter to find out if there was hostile discrimination. It was found to be so in **Meena A. Kuwalekar** (supra), but applying the same principles laid down by the Hon'ble High Court to the present case, it does not appear to be so.



13. Mr. Bandiwadekar then relied upon **Sushil Kumar Y. Jha Vs. Union of India, AIR 1986 SC 1636** wherein it was held *inter-alia* that the employees are not in a position to bargain with their employers and this fact must be borne in mind by the Courts. I have borne this principle in mind while arriving at the conclusions herein.

14. The above discussion must have made it very clear that much as the Applicants would assail the Respondents for hostile discrimination that really does not appear to be so. After-all, in running a huge administration involving the departmental heads of more than one places and more than one places also, it may not always be possible to take decisions with mathematical accuracy. Therefore, if in the event of a tie, some slant appears to be there in favour of female candidates for their domestic reasons that by itself can be no ground to hold that any favoritism or partiality was shown towards them. The manner in which the services are to be utilized has to be, by and large left to the departmental heads and I must repeat, however, that if the discrimination is writ large on the face of it, then the judicial forum will surely intervene or even interfere. I do not think, this is such a case.

A handwritten signature in black ink, consisting of a stylized 'M' followed by a flourish and a long horizontal line extending to the right.

15. It must, however, be observed that the Applicants still have the opportunity in future to renew their requests. I must clearly observe that the Office of the 2nd Respondent must be careful in making a clear remark about their stand, so that the task of the Respondent No.1 becomes easier. That may not have exactly happened in these two OAs. Further, the mere fact that a few of the personnel may have moved the judicial authority should never be held against them because that would be contrary to the elementary principles of civilized public administrative law and justice. There should be objectivity in the matter of drawing the conclusions in that behalf.

16. I do not consider these to be fit cases to be interfered with and reserving the rights of the Applicants to renew their request in future, which of course shall be duly considered on its merit by the Respondents and with the observations in Para 15, these OAs are disposed of with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
24.08.2016

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24.08.16

Mumbai
Date : 24.08.2016
Dictation taken by :
S.K. Wamanse.