

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.243 OF 2016

DISTRICT : PUNE

Shri Suresh Vishwanath Shelar.)
Aged : 48 Yrs. Working as Tailor,)
Class-IV, Railways Pune, R/o. 6/14,)
Old Police Line, Railways Pune,)
Kirkee, Pune - 20.)...Applicant

Versus

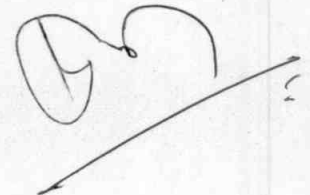
1. The Special Inspector General of)
Police, Kolhapur Range, Kolhapur,)
Having Office at Tarabai Park,)
Kolhapur.)
2. The Superintendent of Police,)
Railways Pune, Having Office at)
Kirkee, Pune - 20.)...Respondents

Shri B.A. Bandiwadekar, Advocate for Applicant.

Ms. N.G. Gohad, Presenting Officer for Respondents.

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

DATE : 06.09.2016



JUDGMENT

1. This Original Application (OA) questions the transfer of a Tailor in the Police Department (Non Uniformed) from Pune Loha Marg to Pune Rural on various grounds. The transfer is apparently made on administrative grounds, but thinly disguised is the ground which puts question marks in various ways on the conduct of the Applicant.

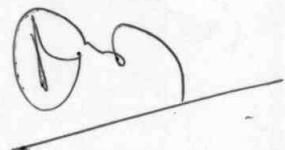
2. I have perused the record and proceedings and heard Shri B.A. Bandiwadekar, the learned Advocate for the Applicant and Ms. N.G. Gohad, the learned Presenting Officer for the Respondents.

3. The order herein impugned suffers from an initial jolt which must lead in the success of this OA regardless of whatever be the state of affairs as regards the other fact components thereof. This order is issued under Section 3(2) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (Transfer Act hereinafter).

A handwritten signature and initials are present at the bottom left of the page. The signature appears to be 'A. B.' with a flourish, and there are some initials or marks above it.

4. In as much as the Applicant is working as a Tailor in the Class-IV category, he is not such a Police Personnel as to be governed by the provisions of the Maharashtra Police Act, 1951 and is, therefore, governed by the provisions of the Transfer Act. The order *inter-alia* mentions that the Applicant was earlier transferred from Pune Loha Marg to the Police Training Centre, Nanvij, Daund (Class-IV) but that order came to be cancelled. It was further mentioned that the conduct of the Applicant was extremely grave and his continuation at the place he was transferred from was pregnant with the possibility of some untoward incident taking place due to the disputes amongst the employees. The concerned Superintendent of Police had recommended his transfer out of the Loha Marg, and therefore, under the provisions of Section 3(2) of the Transfer Act, the Special Inspector General of Police, Kolhapur Range being the Respondent No.1 herein effected the transfers of the Applicant as mentioned above. This order is dated 30th January, 2016. The 2nd Respondent is the Superintendent of Police, Railways Pune.

5. It is clearly an admitted position that the authority purporting to be the competent authority under the Transfer Act that issued the impugned order had not been notified as such under Section 7 of the Transfer Act. The



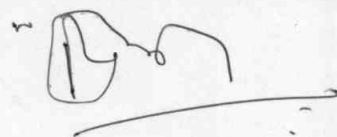
learned P.O. initially took an adjournment to make sure if such a Notification was there or not, but ultimately, it came about that no such Notification was there, although Ms. Gohad, the learned P.O. still maintained that the said authority was competent to make transfer and secondly, the place of posting remains Pune, and therefore, no dispute can successfully be raised with regard to the transfer.

6. In Original Application No.743/2012 (Shri Manohar B. Satav Vs. The Commissioner, Social Welfare dated 15.01.2013), the then Administrative Member had to deal with the case of a Class-IV employee in the matter of transfer and it may be mentioned here itself that it is not at all disputed that there is no fixed tenure of the Class-IV employees just as they are in case of the other category of public personnel. Under Section 3(2) of the Transfer Act, it is laid down that the Group 'D' or Class-IV employees could not be transferred out of the station where they were serving except on their request when a clear vacancy existed at the station where the transfer was sought or on mutual transfer or when on a substantiated complaint of serious nature was received against the said Group 'D' employee.



7. In **Mohan Satav's** case, it was held by this Tribunal that the publication (notification) of the heads of the Department and appropriate authority under Section 7 of the Transfer Act was absolutely imperative. It was in fact held relying upon several Judgments of this Tribunal that even if the concerned authority was the appointing authority, a separate Notification under Section 7 empowering him as a competent authority under the Transfer Act was imperative. That being the state of affairs, it is quite clear that the authority making the impugned order was quite clearly not competent to issue such an order of transfer in the absence of he being notified under Section 7 under the Transfer Act.

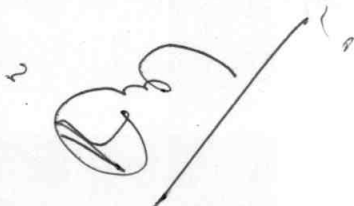
8. A Division Bench of the Hon'ble Bombay High Court (Nagpur Bench) in **Vanmala S. Aney Vs. National Education Society, Khamgaon and Ors., 1982 Mh.L.J. 403 (b)** was pleased to hold that where the power was given to do a certain thing in a certain way, the thing must be done in that way only or not at all and in that sense, it was mandatory. To the same effect, was a Judgment of another Division Bench in an unreported Judgment in **Writ Petition No.5465/2012 (Kishor S. Mhaske Vs. Maharashtra OBC Finance & Development Corporation & 2 Ors. dated 7th March, 2013)**. That was a matter under the Transfer Act and Their Lordships were pleased



to hold relying on an earlier Judgment of the Hon'ble Bombay High Court that when a statutory power was conferred upon an authority to do a particular thing, that exercise had to be carried out in the manner laid down by the statute. It is, therefore, very clear that notwithstanding the fact that the Respondent No.1 may be one of the highest authorities which in fact he is, but if he was not notified under Section 7 of the Transfer Act, then an order made by him under the Transfer Act would be invalid.

9. In this behalf, Mr. B.A. Bandiwadekar, the learned Advocate for the Applicant also referred me to **O.A.No.490/2012 (Smt. Urmila Laxman Joshi & 3 Ors. Vs. The Controller, Legal Metrology, MS, Mumbai, dated 4.10.2012.** In that O.A, the then Hon'ble Chairman struck down the order of transfer when it was as is in the present case violative of Section 7 of the Transfer Act because there was no Notification conferring the power to effect transfer on the Head of the Department. That principle is squarely applicable hereto.

10. It is very clear that the above referred infirmity goes to the root of the matter, and therefore, it is an incurable illegality and not just a curable irregularity and the impugned order deserves to be quashed only on that count itself.

A handwritten signature in black ink, consisting of a stylized 'B' followed by a diagonal line and some scribbles.

11. I may yet deal with at least two other aspects of the matter to the extent warranted hereby. The learned P.O. very strongly urged that there was no change of place i.e. Pune, and therefore, the Applicant was indulging in pointless nit-picking. Now, as to this submission of the learned P.O, I find that if the order itself suffered from incurable illegality, then it must be set aside just for the asking. In an unreported Judgment of a Division Bench of the Hon'ble Bombay High Court in **Writ Petition No.7977/2012 (The State of Maharashtra and Anr. Vs. Purushottam R. Pandare & Anr, dated 22nd August, 2012)** in dealing with the definition of the word, 'Transfer', Their Lordships were told that as were the facts in that case, the transfer was from Karad to Karad and was, therefore, no transfer in actual fact. Their Lordships analysed the definition of the word. "Transfer" as appearing in the Transfer Act and found that there the employee had been posted from one Department to another that is from Zilla Parishad to P.W.D, and therefore, it would have to be treated as transfer and repelling the contention to the contrary, the order made by this Tribunal impugned before Their Lordships was confirmed.

12. Another aspect of the matter is that there is material to show that the Applicant was subjected to the departmental enquiry. Initially, an enquiry under Rule 8 of



the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 came to be initiated, but later on, the procedure under Rule 10 thereof which deals with imposition of minor penalties was invoked. Be that as it may, in this particular OA, I am not concerned with the details of those DEs, but it is clear that the penalties were imposed in the manner hereinabove set out, and therefore, it was by no means a case of serious nature as it were and thus, the order of transfer cannot be sustained. Examine it from any angle and the impugned order is unsustainable and is liable to be set aside.

13. The order herein impugned being the one dated 30.1.2016 (Exh. 'A', Page 13 of the Paper Book) is quashed and set aside and the Applicant is directed to be reposted as Tailor, Class-IV, Loha Marg, Pune within four weeks from today. The Original Application is allowed in these terms with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
06.09.2016

7.16

Mumbai
Date : 06.09.2016
Dictation taken by :
S.K. Wamanse.