

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 250 of 2017

- 1) Omeshwar S/o Yeshwant Meshram,
aged about Years, Occ. Service,
R/o, O/o Police Station Gondia City, Gondia.
- 2) Jitendra S/o Nanaji Giri,
aged about Years, Occ. Service,
R/o, O/o District Traffic Branch, Gondia.
- 3) Ashish Khushalchand Atilkar,
aged about 37 Years, Occ. Service,
R/o, O/o Police Station Tiroda, District Gondia.
- 4) Sandip S/o Ganesh Rathod,
aged about 36 Years, Occ. Service,
R/o, O/o Police Station Gondia City, Gondia.
- 5) Pramod S/o Purandmalji Tekam,
aged about 38 Years, Occ. Service,
R/o, O/o District Traffic Branch, Gondia.
- 6) Sunil S/o Revaramansingh Chauhan,
aged about 36 Years, Occ. Service,
R/o, O/o Police Station, Goregaon, District Gondia.
- 7) Gourav S/o Gopal Giri,
aged about 35 Years, Occ. Service,
R/o, O/o Police Station, Goregaon, District Gondia.
- 8) Praikshit S/o Anandrao Bavankar,
aged about Years, Occ. Service,
R/o, O/o Police Station, Goregaon, District Gondia.
- 9) Chhatrapal S/o Ruplal Fulbandhe,
aged about 39 Years, Occ. Service,
R/o, O/o District Traffic Branch, Gondia.

- 10) Rahul S/o Mahadeorao Puri,
aged about 33 Years, Occ. Service,
R/o, O/o Police Station, Gangazhari, District Gondia.
- 11) Vedesh S/o Sudharkarhi Dighore,
aged about 32 Years, Occ. Service,
R/o, O/o Police Station, Tiroda, District Gondia.
- 12) Devendra S/o Shivilal Chopkar,
aged about 31 Years, Occ. Service,
R/o, O/o Police Station, Gangazhari, District Gondia.
- 13) Mahendra S/o Nemaji Punyapreddiwar,
aged about 34 Years, Occ. Service,
R/o, O/o Police Station, Arjuni-Morgaon, District Gondia.
- 14) Jitendra S/o Maniram Katre,
aged about 31 Years, Occ. Service,
R/o, O/o Police Station, Amgaon, District Gondia.
- 15) Girish S/o Mahesh Pande,
aged about 37 Years, Occ. Service,
R/o, O/o Police Station, Salekasa, District Gondia.
- 16) Santosh S/o Namdeo Samrit,
aged about 36 Years, Occ. Service,
R/o, O/o Police Station, Salekasa, District Gondia.
- 17) Yogesh S/o Madhav Banothe,
aged about 31 Years, Occ. Service,
R/o, O/o Police Head Quarter, Gondia.
- 18) Anil S/o Nilkanth Chakre,
aged about 34 Years, Occ. Service,
R/o, O/o Police Station, Salekasa, District Gondia.
- 19) Kashinath S/o Hanik Jaunjal,
aged about 31 Years, Occ. Service,
R/o, O/o Police Station, Salekasa, District Gondia.
- 20) Devanand S/o Jiyalal Pardhi,
aged about 33 Years, Occ. Service,
R/o, O/o Police Station, Navegaonbandh, Gondia.

- 21) Santosh S/o Humrao Chute,
aged about 36 Years, Occ. Service,
R/o, O/o Police Station, Saalekasa, District Gondia.
- 22) Nilesh S/o Bandusingh Ade,
aged about 38 Years, Occ. Service,
R/o, O/o Police Station, Duggipar, District Gondia.
- 23) Randhir S/p Damodarji Dongre,
aged about 38 Years, Occ. Service,
R/o, O/o District Police Head Quarter, Gondia.
- 24) Amit S/o Jagdish Gomase,
aged about 33 Years, Occ. Service,
R/o, O/o Police Station, Kishori, District Gondia.
- 25) Nitesh S/o Baliram Tekade,
aged about 35 Years, Occ. Service,
R/o, O/o Police Station, Deshari, District Gondia.
- 26) Bhupesh S/o Maroti Katre,
aged about 34 Years, Occ. Service,
R/o, O/o Police Station, Gangazhari, District Gondia.

Applicants.

Versus

- 1) State of Maharashtra,
through the Secretary, Department of Home,
Mantralaya, Mumbai-32.
- 2) Director General of Police,
Maharashtra State, Bhagatsingh Marge, Mumbai-1.
- 3) Special Inspector General of Police,
Gadchiroli Range, Gadchiroli.
- 4) Superintendent of Police, Gondia.
- 5) Gondia District Police Establishment Board,
Gondia.

Respondents.

Mr. S.K. Varma, P.S. Varma, Advs. for the applicant.

Shri A.M. Ghogre, Id. P.O. for the respondents.

**Coram :- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).**

JUDGEMENT

(Delivered on this 15th day of May,2017)

Heard Shri S.K. Varma, Id. Counsel for the applicants and
Shri A.M. Ghogre, Id. P.O. for the respondents.

2. The applicants have challenged their order of transfer dated 8/4/2017 issued by the respondent no.3. The said order is in respect of Police Constabulary including the applicants. In all 122 personnel of Police Constabulary including the applicants have been transferred to various places of Gondia region in naxalite affected and sensitive areas. The said order is in violation of the provisions of the Maharashtra Police Act and the G.Rs. in respect of transfer policy vis-a-vis transfer of Police Constables.

3. According to the applicants, they have already served in the naxalite affected and sensitive areas. Some of the applicants have already served in such areas not only once but even twice and thrice. The said order has been passed in order to favour some Officers.

4. The applicants have therefore prayed that the impugned order dated 8/4/2017 in respect of the applicants be quashed and set aside and the respondents be directed to continue the applicants at their respective postings in Gondia District till they complete five years of tenure as per the Section 22N (1) (b) of the Maharashtra Police Act.

5. The applicants have given the details of the places of present posting and the place of posting on transfer vide impugned order in respect of each and every applicants in para 4.7 (a) to (z). Since said fact is admitted the pleadings in this regard are not repeated.

6. During the course of arguments the applicants were directed to prepare a Chart showing the date of appointments and various postings of the applicants till date. Accordingly the applicants have filed such Chart which is at P.B. of page nos. 124 to 131 (both inclusive).

7. Perusal of the Chart, as aforesaid, makes it crystal clear that some of the applicants have been re-posted in naxalite affected and sensitive areas even though they have completed their tenure in between 5 to 9 years.

8. The respondent no.4 tried to justify the order. According to the respondent no.4, there was no malafide intention on the part of

respondents while issuing transfer order dated 8/4/2017 and the same has been passed looking to the administrative exigencies and in order to maintain law and order in Gondia District. It is further stated that in Gondia district near about 2300 Police Personnel are working, out of which more than 50% are not fit to be sent and posted in sensitive areas as they are over the age of 40 years and some others are lady Police Constables. There are very less number of Police Personnel below the age of 40 years and therefore it was necessary to rotate the postings in the sensitive and naxalite affected areas like Armed Out postings. For anti-naxal operations near about 500 Police Personnel below the age of 40 years who are fit are required and therefore from the available strength the Police Personnel who had earlier worked in the naxalite affected area and transferred in a non-naxal affected area, after sometime in rotation are required to be sent again to naxalite affected area.

9. The respondent no.4 further submits that the order has been passed in the interest of administration and the Establishment Board as per Rule 22J (1) has considered all the aspects regarding re-construction of C-60 Squad and inducting the Police Personnel in the said Squad. The present applicants being below the age of 40 years and having experience and knowledge of the Armed Out Posts have been transferred.

10. Perusal of the Chart (P.B. page nos. 124 to 131) shows that most of the applicants who were serving at their respective places from 2014, 2015 & 2016 and none of them have completed more than five years in their respective posts. It seems that the applicants Mr. Jitendra Nanaji Giri has served in the naxalite affected and sensitive area for more than seven years, Sandip Ganesh Rathod has served for more than 9 years, Sunil Rewaramansingh Chuhan has served for 8 years, Parikshit Anandrao Bawankar has served for 6 years, Chhatrapal Ruplal Fulbandhe has served for 7 years, Vedesh Sudhakarhi Dighore has served for 8 years, Jitendra Maniram Katre has served for 8 years, Santosh Namdeo Samrit has served for almost 7 years, Yogesh Madhav Banothe has served for 7 years, Anil Nilkanth Chakre has served for 8 years, Kashinath Hanik Jaunjai has served for 6 years, Devanand Jiyalal Pardhi has served for 6 years. Rest of the applicants have served for three years and above in the naxalite affected and sensitive areas.

11. The learned P.O. submits that it was necessary to rotate the Police Constabulary and therefore a new Squad has been created in the form of C-60 Squad and in order to accommodate these persons to new posts, the applicants have been moved. It is stated that the experience of the applicants is also considered by the Committee. The Id. P.O. has invited my attention to the Minutes of

the meeting whereby the C-60 Squad has been created. The Minutes of the said meeting are placed on record at P.B. page nos. 38 to 57 (both inclusive).

12. I have perused the Minutes of the meeting whereby C-60 Squad was created. From the said minutes it seems that it was necessary to post 210 Police Constabulary in the naxalite affected and sensitive areas and therefore it was decided to call consent from the Police Constables who are ready to serve in the naxalite affected and sensitive areas. It seems that 146 Police Personnel have given consent for their postings for naxalite affected area. Out of which 106 were called for physical test. Out of which 81 were considered for posting in naxalite affected and sensitive area and finally 78 Personnel have been selected as members of C-60 Squad.

13. I have perused the entire Minutes of the meeting, on which the learned P.O. has placed reliance. It is material to note that there is not even a whisper about requirement of the experienced persons in the Squad and there is no reference even to the postings of the applicants in view of such formulation of Squad. The submission of the learned P.O. therefore cannot be accepted that the applicants' cases were considered in the Minutes of the meeting by the competent authority. Had it been a fact that the competent authority

wanted to accommodate the Personnel in the newly created C-60 Squad and for that purpose some experienced persons were required, this fact should have been mentioned in the Minutes of the meeting. It is also not known as to why these applicants only were selected for being posted in the naxalite affected and sensitive area and on what basis except their age.

14. The learned counsel for the applicants has placed reliance on the G.R. dated 20/5/2014 (P-120). It is G.R. regarding accelerated promotion to the Police Personnel working in the naxalite affected and sensitive area. In Para-5 of the said G.R. it is mentioned as under :-

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 o"kkpk jkghy- id xr% I cf/kr vf/kdkjh @ deþkjh ; kwh I ærh fnY; kl R; kR; k
 ue.kwhpk dkG nku o"kkk {kk vf/kd ok<foyk tkÅ 'kdrts I nj vf/kdpk dkyko/kh@
 i nko/kh i wlgls; ki whzcnynh djko; kph vl Y; kl] epbzilkyhl vf/kfu; e]1951 P; k
 dye&22 u e/khy rjrqhps ikyu d#u foghr I keku; i nko/kh i wlgls; ki whz
 cnyhph dk; ðkgh dj. ; kr ; koh***

15. The plain reading of the aforesaid Clause-5 makes it crystal clear that the tenure of the Officer / Personnel posted in naxalite affected / sensitive area shall be of two years only and such tenure can be extended only if the concerned employee gives consent. It is further stated that in case such employee is to be

transferred before completion of two years or his tenure is to be extended beyond two years, then the consent is required as per the provisions of Rule 22N of the Mumbai Police Act,1951.

16. The learned counsel for the applicants has also invited my attention of Section 22N of the Mumbai Police Act which states about normal tenure of the Police Personnel and competent authority. As per this Section a normal tenure of Police Constabulary shall be five years at one place. Admittedly none of the applicants have completed his tenure of five years at his present post. It is true that in exceptional cases in public interest or on account of administrative exigencies, the competent authority may make mid-term transfer of any Police Personnel. However, Minutes of the meeting placed on record nowhere shows that the cases of the applicants were considered by the Committee and if considered on what basis. There is even no reference to the case of the applicants. Thus it is crystal clear that no criteria has been considered for transfer of the applicants from their present postings to the respective postings in naxalite affected / sensitive area. There is nothing on record to show that the respondents have followed any rotation muster for considering the cases of the Police Personnel.

17. In my opinion had it been a fact that the respondents are in need of fresh blood below the age of 40 years to resolve the law and order situation in naxalite affected and sensitive area, they shall prepare the list of the Police Personnel who are below the age of 40 years and who have not completed their tenure in such area. They shall also call consent of the persons who are willing to work in the naxalite affected and sensitive area beyond tenure of two years or for further fresh tenure in such area and thereafter the Personnel shall be picked up from such list as per chronology. The Government may form a concrete policy as regards use of experience of the personnel who had already worked in such naxalite affected and sensitive area. The roster in this regard shall be maintained. The Government cannot use pick and choose policy.

18. As already stated none of the applicants have completed their tenure of five years and all the applicants have already completed more than three years tenure in the naxalite affected and sensitive area. Some of them have completed their tenure in such area twice or thrice in between 3 to 9 years. In such circumstances, there is no logic behind picking up the applicants without their consent for again being posted in the naxalite affected and sensitive area. The respondent / authority seems to have chosen pick and choose policy. The impugned order of transfer in respect of the applicants

seems to be, therefore against the provisions of the Maharashtra Police Act and against the provisions of transfer policy as well as against the policy decision taken by the Government not to post any Personnel in naxalite affected and sensitive area for more than two years without his consent and therefore the same deserves to be quashed and set aside, so far as the applicants are concerned.

Hence, the following order :-

ORDER

The O.A. is partly allowed. The impugned order dated 8/4/2017 issued by respondent no.3 whereby the present applicants are transferred from the respective current postings to various postings at naxalite affected and sensitive area within Gondia Region on their respective posts of Nayak Police Constable is held illegal and in contravention of provisions of the Maharashtra Police Act and the G.Rs. in this regard and therefore the said order is quashed and set aside in respect of present applicants. The respondents are directed to allow the applicants to continue to work at their respective posts in Gondia District prior to their transfers vide impugned order till they complete five years of their respective tenure. No order as to costs.

(J.D. Kulkarni)
Vice-Chairman (J).