

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.28 OF 2019

Shri Krushik S. Kharat.)
Age : Adult, Working as Police Constable,)
L.T. Marg Police Station, Mumbai – 400 002.)...**Applicant**

Versus

The Commissioner of Police, Mumbai.)
Having office at Mumbai Police Commissionerate)
L.T. Marg, Opp. Crawford Market, Fort,)
Mumbai – 400 001.)...**Respondent**

Mr. A.V. Bandiwadekar, Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondent.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 17.05.2019

JUDGMENT

1. The Applicant has challenged the impugned transfer order dated 16.12.2018 whereby he has been transferred from L.T. Marg Police Station, Mumbai to Armed Police Force, Naigaon, Mumbai invoking jurisdiction of this Tribunal under Section 19 of Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to this application are as under :-

The Applicant joined as Police Constable on the establishment of Respondent – Commissioner of Police on 07.04.2003 and worked at various Police Stations. By order dated 31.05.2014, he was transferred from Dongri Police Station to L.T. Marg Police Station and since then, he was working at L.T. Marg Police Station till the impugned order. The Respondent by impugned order dated 16.12.2018 transferred him to Armed Police Force, Naigaon, which is under challenge in this O.A. The Applicant contends that he has not completed the normal tenure of five years at L.T. Marg Police Station, and therefore, mid-term and mid-transfer without compliance of Section 22 and 22-N(2) of 'Maharashtra Police Act, 1951' (hereinafter referred to as 'Maharashtra Police Act 1951') is illegal. He contends that the impugned transfer has been passed on alleged default report / misconduct, without proper compliance of instructions issued in Circular dated 07.10.2016 which *inter-alia* provides for preliminary enquiry in case where transfer is necessitated on account of complaint or default report. He further contends that the constitution of Police Establishment Board (PEB) at the level of Commissioner, which purportedly decided to transfer him, is not legal, and therefore, the decision of such PEB is unsustainable in law. Thus, according to him, there is no compliance of Section 22-N(2) of 'Maharashtra Police Act 1951' and prayed to set aside the impugned order.

3. The Respondent resisted the application by filing Affidavit-in-reply (Page Nos.22 to 29 of Paper Book) *inter-alia* denying the allegations made by the Applicant. It is not in dispute that the Applicant has not completed normal tenure of five years at L.T. Marg Police Station. The Respondent contends that, while serving at L.T. Marg Police Station, the Applicant found indulging in misconduct, and therefore, default report was received for his transfer. He was in a habit to remain absent on duty without prior permission and also found indulging in the activities subverting to the discipline of Police Force. Therefore, the default report was placed before the PEB headed by Commissioner of Police on 14.12.2018. Accordingly, the PEB considered the default report and found

that the continuation of the Applicant at L.T. Marg Police Station would be subverting to the discipline of Police Force, and therefore, the PEB decided to transfer him on the administrative ground from L.T. Marg Police Station, Mumbai to Armed Police Force, Naigaon. The Respondent contends that the decision to transfer him is in consonance with Section 22 and 22-N(2) of 'Maharashtra Police Act 1951', which empowers PEB to transfer Police Personnel mid-term or mid-tenure in exceptional cases, in public interest and on account of administrative exigencies. The Respondent thus sought to justify the transfer of the Applicant and prayed to dismiss the O.A.

4. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to contend that the very composition of PEB at Commissionerate level is not in accordance to law in absence of one of the member from Scheduled Caste Category, which is one of the valid requirement of PEB as per Section 22(i) of 'Maharashtra Police Act 1951'. Secondly, though the Applicant has been transferred on alleged default report, there is no proper compliance of Circular dated 07.10.2016, which *inter-alia* provides for preliminary enquiry in case of transfer on complaint or default report. On this line of submission, he sought to contend that the impugned order is not sustainable in law.

5. Per contra, Smt. K.S. Gaikwad, learned Presenting Officer submitted that, in so far as the composition of PEB is concerned, the Commissioner of Police, Mumbai himself belongs to Backward Class, and therefore, the constitution of PEB is legal and valid. As regard default report, the learned P.O. submitted that, having regard to the misconduct and insubordination, his continuation at L.T. Marg Police Station found subverting to the discipline of the Department, and therefore, the PEB in it's wisdom decided to transfer the Applicant. On this line of submission, she submitted that the decision taken by PEB being Competent Authority for such mid-term and mid-tenure transfer, cannot be faulted with, as it was necessitated for administrative exigency / reason.

6. Admittedly, the Applicant has not completed his normal tenure of five years at L.T. Marg Police Station, and therefore, it is mid-term and mid-tenure transfer. The Respondent invoked Section 22-N(2) of 'Maharashtra Police Act 1951' to transfer the Applicant, which *inter-alia* provides that, in public interest and on account of administrative exigency, the Competent Authority i.e. PEB shall make mid-term transfer of any Police Personnel of Police Force. Needless to mention that the transfer is an incidence of service and ordinarily, those are made in exercise of administrative function to meet the exigencies of service and in public interest. The order of transfer can be questioned in the Court or the Tribunal only where it is *mala-fide* or made in violation of statutory provisions. Suffice to say, unless the order of transfer is in conflict with Rules or express legal provisions, the Court should decline to interfere in such transfer. The Hon'ble Supreme Court in **1993 AIR 2444 (Union of India Vs. S.L. Abbas)** held that the order of transfer can be questioned in Court only when it is *mala-fide* or made in violation of statutory provisions and the Tribunal is not an appellate authority sitting in Judgment over the order of transfer and it cannot substitute its own Judgment for that of the authority competent to transfer.

7. In so far as the composition of PEB is concerned, Section 22(i) of 'Maharashtra Police Act 1951' provides that the PEB at Commissionerate level shall consist of Commissioner of Police as Chairman or Chairperson or two senior-most Officers in the rank of Joint Commissioner or Additional Commissioner or Deputy Commissioner of Police and Deputy Commissioner of Police (Head Quarter) as Member Secretary. It further provides that, if none of the members is from Backward Class, then the State Government may appoint additional Member of the rank of Deputy Commissioner of Police belonging to such Class. In the present case, the Respondent has categorically stated in Affidavit that the Commissioner himself represents Backward Class, and therefore, the composition of PEB is legal. However, the learned Advocate for the Applicant sought to contend that one of the Member should be from Backward Class and

not Chairman or Chairperson. To say the least, this submission is fallacious and deserves to be rejected. All that requirement of law is to have one of the person in PEB from Backward Class, which has been complied with in the present PEB. Suffice to say, the contention raised in this behalf about the constitution of PEB is devoid of merit.

8. Now, turning to the ground of transfer, the perusal of minutes of PEB reveals that the PEB had received default report from Additional Commissioner of Police, South Region, Mumbai against the Applicant alleging that the Applicant is in habit of remaining absent and indiscipline behavior in the Department. The Respondent has also placed on record additional Affidavit of Shri Sachin A. Patil, Deputy Commissioner of Police, who was one of the Member of PEB to clarify and explain sufficiency of material before the PEB. In Affidavit, he has stated that the file i.e. the default report submitted by the Additional Commissioner of Police, South Region, Mumbai was placed before the PEB and it was discussed. The Respondent has also placed on record the copies of default report, which is at Page Nos.32 to 38 of P.B. He further stated in Affidavit that the Members of PEB perused the default report and decided that in order to maintain discipline in the Department, the transfer of the Applicant is necessary and accordingly, the PEB unanimously resolved to transfer the Applicant on administrative ground invoking Section 22-N(2) of 'Maharashtra Police Act 1951'.

9. Now, turning to the default report, its perusal reveals that there were several defaults against the Applicant. On 19.11.2018, he was deputed at Vidhan Bhavan for Bandobast, but he failed to report on duty and entry to that was taken in Station Diary. He was also in habit to come late on duty frequently and for that default, the memo was issued to him, which he refused to accept. Therefore, strict warning was given to him, but despite it, there was no improvement in his behavior. He was also found involved in groupism by making propaganda subverting to the discipline of Police Force. On one occasion, he had

applied for three days Casual Leave, but before submitting Leave Application to the Department for appropriate order, he circulated the photo of application to other Constables on Whatsapp group, though there was no Casual Leave at his credit. The Deputy Commissioner of Police, Zone II had also categorically opined that the behaviour of the Applicant is causing adverse effect on overall discipline of the Police Force in L.T. Marg Police Station and recommended for his transfer. Apart, Additional Commissioner of Police, South Region, Mumbai concurred with the views expressed in default report by Senior Police Inspector, L.T. Marg Police Station as well as D.C.P, Zone II and recommended for transfer. This was the material before the PEB. As such, it cannot be said that no administrative exigency or reason is made out to transfer the Applicant.

10. Not only that, after transfer of the Applicant, the Department has issued charge-sheet by order dated 12.04.2019 against the Applicant for enquiry in respect of his alleged misconduct. The Respondent has produced a copy of Officer Order dated 12.04.2019 to show that the D.E. has been already initiated against the Applicant.

11. True, in transfer order dated 16.12.2018, the Applicant is shown transferred 'for administrative reason'. This transfer order is based upon the material placed before the PEB and the decision taken thereon. In default report as well as in minutes of PEB, the reasons of default and alleged misconduct of the Applicant are specifically mentioned. This being the position, it cannot be said that no reasons are forthcoming for the transfer of the Applicant or it is colourable exercise of power under the guise of administrative exigency. Needless to mention that the reason noted 'for administrative reason' can be no less an exceptional circumstance or special reason. When the reasons are weighed with the authority for arriving on satisfaction, it certainly qualify the test of the "administrative exigency".

12. Now, so far as the non-compliance of Circular dated 07.10.2016 is concerned, it provides for preliminary enquiry before transferring Police Personnel on the ground of complaint. As stated above, in default report, there is specific mention about the habitual absence of the Applicant of duty as well as involvement in some activities were subverting to the discipline of Police Force. In past, he was given strict warning for not reporting on duty within time, but there was no improvement in his behavior. Besides, there is specific mention in default report that the Applicant is indulging in creating unrest amongst other Constables and these activities found subverting to the discipline of Police Force. Not only that after transfer, the departmental action has been initiated against the Applicant by issuing charge-sheet. Therefore, only because the statement of the Applicant is not recorded in preliminary enquiry by conducting formal preliminary enquiry in terms of Circular dated 07.10.2016 that itself would not render transfer order illegal. All that, what is the requirement of Circular dated 07.10.2016 is to have preliminary enquiry about the alleged misconduct of Police Personnel. In the present case, the frequent absence from duty and incongruous nature was one of the reasons noted in default report and it is a matter of record.

13. As such, in the facts and circumstances of the case, if the PEB found it appropriate to transfer the Applicant to maintain discipline in the Department, and thereafter to conduct a regular D.E, so as to give the Applicant fair opportunity before taking action in departmental proceeding, then such administrative decision, which is based upon subjective satisfaction of PEB cannot be faulted with. The transfer of the Applicant was found inevitable to maintain discipline in the Department and it certainly qualify the term 'administrative exigency'.

14. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to refer the decision of Hon'ble High Court in ***Writ Petition No.8437/2017 (Additional Chief Secretary, Home Department Vs. Arun Pawar) decided on 5th***

September, 2018 and Writ Petition No.91/2019 (Sunil Koli Vs. State of Maharashtra) decided on 4th January, 2019. I have gone through the Judgments. In both these matters, the transfer orders were quashed, as the reasons for transfers were not recorded. In Writ Petition No.8437/2017, while recommending the transfer, the Competent Authority simply mentioned the names of Officers, their place of original posting and place of proposed posting without mentioning the reasons for such transfer, so as to make out a case on 'administrative exigency'. There was complete absence of record about the satisfaction of the Members of the Board. Therefore, in fact situation, the transfer orders were quashed. These authorities are of little assistance to the Applicant's Advocate in view of aforesaid discussion, which clearly makes out a case for transfer on administrative exigency with reasons therefor.

15. The learned Advocate for the Applicant referred the decisions passed by this Tribunal in **O.A.No.832/2018 (Ravindra Kadampatil Vs. State of Maharashtra) decided on 17.10.2018, O.A.900/2018 (Prashant Pisal Vs. Principal Secretary, Revenue) decided on 20.12.2018, O.A.550/2018 (Shivanand Bobade Vs. Superintendent of Police, Sangli) decided on 02.01.2019, O.A.555/2016 (Rajesh Devare Vs. State of Maharashtra) decided on 26.08.2016 and O.A.536/2016 (Vikas Biyani Vs. State of Maharashtra) decided on 07.07.2016.** In all these matters, in fact situation, the transfer orders were held unsustainable and accordingly quashed.

16. It is well settled that the ratio of any decision must be understood in the background of the facts of that case. It has said long ago that, a case is only an authority what it actually decides and not what logically follows from it. Little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. One should avoid the temptation to decide cases by noticing the colour of one case against the colour of another.

17. The decision rendered in above O.As. were based upon the facts and circumstances therein, and therefore, on factual aspects, those are of little assistance to the Applicant.

18. At this juncture, a reference of decision of Hon'ble Bombay High Court in **2008 (2) Mh.L.J. 640 (Shri V.V. Gadekar, Deputy Engineer Vs. MHADA)** would be appropriate, wherein it has been held as follows :-

“Ordinarily, orders of transfer are made in the exercise of administrative authority to meet the exigencies of service and in public interest. How the Administration has to run its affairs is not a matter which squarely falls in the judicial domain. Unless the orders of transfer were in conflict with Rules and were made for ulterior motives or in patent arbitrary exercise of powers, the Court would decline to interfere in such matter. The transfer could be due to exigencies of service or due to administrative reasons. The Petitioners in the present case have failed to demonstrate as to how the order of transfer has been passed for collateral purposes or is a patent arbitrary exercise of power.”

19. This Tribunal is also guided by the decision of Hon'ble Supreme Court in **(2004) 4 SCC 245 (Union of India Vs. Janardhan Debanath & Anr.)** wherein in Para No.14, the Hon'ble Supreme Court held as follows :-

“14. The allegations made against the respondents are of serious nature, and the conduct attributed is certainly unbecoming. Whether there was any misbehaviour is a question which can be gone into in a departmental proceeding. For the purposes of effecting a transfer, the question of holding an enquiry to find out whether there was misbehaviour or conduct unbecoming of an employee is unnecessary and what is needed is the prima facie satisfaction of the authority concerned on the contemporary reports about the occurrence complained of and if the requirement, as submitted by learned counsel for the respondents, of holding an elaborate enquiry is to be insisted upon the very purpose of transferring an employee in public interest or exigencies of administration to enforce decorum and ensure probity would get frustrated. The question whether respondents could be transferred to a different division is a matter for the employer to consider depending upon the administrative necessities and the extent of solution for the problems faced by the administration. It is not for this Court to direct one way or the other. The judgment of the High Court is clearly indefensible and is set aside. The writ petitions filed before the High Court deserve to be dismissed which we direct. The appeals are allowed with no order as to costs.”

20. As such, the present situation is squarely covered by the decision of Hon'ble Supreme Court in **Janardhan Debanath's** case (cited supra). The ratio of this decision is where the conduct attributed to the Government servant is unbecoming and his transfer is necessitated in the exigencies of administration or to enforce decorum or discipline in the Department, then the Government can do so without holding an elaborate enquiry. The Hon'ble Apex Court further held that where the employee could be transferred to a different place is a matter for the administration to consider and the extent of solution for the problem faced by the administration and it is not for the Court to direct one way or the other. In the present case also, the transfer of the Applicant was necessitated in view of misconduct and incongruous behavior of the Applicant and after his transfer, the regular departmental enquiry has been also initiated. Suffice to say, the transfer order cannot be faulted with.

21. For the aforesaid reason, I am satisfied that the impugned transfer order is in consonance with Section 22-N(2) of 'Maharashtra Police Act 1951' and the decision of PEB cannot be faulted with. The challenge to the transfer order therefore fails and O.A. deserves to be dismissed. Hence, the following order.

ORDER

The Original Application is dismissed with no order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 17.05.2019

Dictation taken by :

S.K. Wamanse.