

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.289 OF 2021

DISTRICT : MUMBAI

Shri Shivram Raghuvirdas Gavande.)
Age : 37 Yrs., Occu.: Service,)
R/at : R 3A, 42, Vishveshwar CHS,)
Sai Siddhi Complex, Jogeshwari,)
Mumbai – 400 060.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Addl. Chief Secretary,)
Home Department, Mantralaya,)
Mumbai – 400 032.)
2. The Commissioner of Police.)
Having Office at Crawford Market,)
Shahid Bhagat Singh Road,)
Mumbai – 400 025.)
3. The Dy. Commissioner of Police.)
SB-II, CID, Having Office at SB-II)
Office, Sayyad Badruddin Tayaabji)
Marg, Near Rang Bhavan,)
Mumbai – 400 001.)...**Respondents**

Mr. R.L. Kulkarni, Advocate for Applicant.

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

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 27.01.2022

JUDGMENT

1. The Applicant has challenged transfer order dated 04.09.2020 issued by Commissioner of Police, Mumbai whereby he is transferred from Special Branch-II, CID, Mumbai to Police Station Tardeo (Armed Police) invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

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

The Applicant is serving as Police Constable on the establishment of Respondent No.2 – Commissioner of Police, Mumbai. By order dated 21.02.2017, he was transferred to Special Branch-II, CID, Mumbai and was posted at Emigration Counter, International Airport, Mumbai. Being Police Constable, he is entitled to 5 years' tenure in terms of provisions of Maharashtra Police Act, 1951 as amended in 2015. However, by order dated 04.09.2020, he is transferred mid-term and mid-tenure on the ground of alleged default of negligence in performance of duties while working at Emigration Counter, International Airport, Mumbai, which is challenged in the present O.A.

3. Shri R.L. Kulkarni, learned Advocate for the Applicant sought to assail the impugned transfer order *inter-alia* contending that no such case is made out for mid-tenure transfer as contemplated under Section 22N(2) of Maharashtra Police Act and the Applicant is transferred on alleged default occurred on 19.05.2019 belatedly by transfer order dated 04.09.2020, that too, without recording proper minutes of Police Establishment Board (PEB). He submits that impugned transfer order is malicious and applicant is subjected to discrimination.

4. Per contra, Shri A.J. Chougule, learned Presenting Officer sought to justify the transfer order in reference to contentions raised in Affidavit-in-reply *inter-alia* contending that on 19.05.2019 while Applicant was posted at Emigration Counter, International Airport, Mumbai, he did not

intercept one person viz. Ratan Kumar against whom look out notice was issued and thereby committed serious lapse in performance of duties. The confidential report to that effect was sent to Commissioner of Police and the continuation of the Applicant at Emigration Counter, International Airport, Mumbai found not in public interest and also from the point of security. Therefore, PEB unanimously recommended for his transfer and in pursuant to it, he was transferred to Tardeo Police Station. As regard minutes of PEB, he submits that due to Covid-19 pandemic situation and because of transfer of one Member of PEB on same day, formal minutes of PEB could not be recorded, but fact remains that all Members of PEB considered default report and approved noting to transfer the Applicant. He has further pointed out that Memo was given to the Applicant and Applicant admits his lapse and tendered apology. On this line of submission, he pleads that the transfer is in compliance with Section 22N(2) of Maharashtra Police Act.

5. Indisputably, Applicant being Police Constable and transferred to Special Branch-II by order dated 21.02.2017, he was entitled to normal tenure of 5 years in the said post, as provided under Section 22N(1)(b) of Maharashtra Police Act. However, even if normal tenure for Police Personnel is provided under the provisions of Maharashtra Police Act, the competent authority viz. PEB is empowered to transfer Police Personnel in exceptional cases, in public interest and on account of administrative exigencies. Needless to mention, the transfer is an incidence of service and ordinarily those are made in exercise of administrative functions to meet the exigencies of service and in public interest. The orders of transfers can be questioned in the Tribunal where it is *malafide* or made in violation of statutory provisions. Suffice to say, unless transfer order is in conflict with express legal provisions or malicious, the Tribunal should decline to interfere and Tribunal is not supposed to act as an appellate authority sitting over the order of transfer and it cannot substitute its own view for that of competent authority.

6. Now tuning to the facts of the present case, admittedly, on 19.05.2019 while Applicant was working at Emigration Counter, International Airport, Mumbai, he failed to intercept one person viz. Ratan Kumar against whom look out notice was issued by the competent authority. The Applicant was entrusted with the duty to check Passport, Visa and to clear emigration of passengers. However, when Ratan Kumar appeared before him for clearance instead of intercepting him on account of look out notice, he cleared his exit out of Airport. However, it was immediately detected in CC TV footage, and therefore, Special Branch Officials swung into action and he was arrested. On account of this serious lapse, show cause notice was given to the Applicant and in reply, he admits the mistake. In reply dated 22.05.2019 (Page No.58 of Paper Book), he admits lapse on his part and apologies for the mistake. Let us see the relevant portion of reply to show cause notice.

“At 14.29 pm Passenger namely Rathan Kumarvalli holding Passport No.L8132143 came at my Counter while clearing him. I told him to remove Cap, took his photo and even I matched his blinking Locs with Photo. But person standing in front which did not show a resemblance. However, I overlooked other parameters which are equally necessary and I cleared him which lead to non-detection of Loc. in the flow of work.

I deeply regret for the entire incident. This was happened unintentionally by me. I also regret the inconvenience caused to seniors because of me.

I humbly request you to forgive me. I will take care hence forward while clearing Passengers.”

7. As such, there is no denying that Applicant failed to work diligently and because of his lapse, Ratan Kumar against whom look out notice was issued was not intercepted in Emigration Centre itself. Undoubtedly, it was serious lapse and at time, such lapse may pose great threat to the security. It is on this background, the Applicant came to be transferred by the recommendation of PEB. Having regard to serious lapse, the decision of PEB to transfer the Applicant can hardly be questioned. Suffice to say, the submission advanced by the learned

Advocate for the Applicant that transfer is malicious is totally unpalatable and misconceived.

8. Now turning to recording minutes of PEB, the Respondents have filed Affidavit of N. Amika was Deputy Commissioner of Police (Headquarter) and one of the Member of PEB. In Affidavit, it is stated as under :-

“It is humbly submitted that for effecting General Transfers of the year 2020, the office of the Commissioner of Police had appointed a committee of one Additional Commissioner and two Deputy Commissioners. The said appointed Committee had scrutinized all the information about the constabulary who had completed their tenure in respective Police Stations / Branches. The scrutiny committee also went through the Request transfer applications given by the constables for mid term transfer on request and also had scrutinized the default reports submitted by the controlling officers. After scrutinizing the information, the committee had recommended the transfers to the Police Establishment Board. A Meeting of the Police Establishment Board was called on 03.09.2020, which was attended by the Commissioner of Police, Joint Commissioner of Police (Admin) and DCP HQ-I. As the Corona Pandemic was high, other members of the committee were not called for the meeting. During the meeting the recommendations of the scrutiny committee were discussed and it was approved by the members of the Police Establishment Board.

It is further submitted that on the said day, the Joint Commissioner of Police (Admin) who was member of Police Establishment Board got transferred out of Mumbai city on promotion and he relinquished the charge on the same day. Due to this sudden change the necessary minutes of the meeting could not be drawn. It was an inadvertent administrative mistake of the office of the Commissioner of Police. It is further submitted that the meeting of Police Establishment Board was held and conscious decision about transfers was taken by the Police Establishment Board. During the General Transfer 2020, 3187 Police men were transferred who have completed their tenure and 160 Police men have been transferred on request and on default report. Due consideration and importance have been given to the default of the applicant which was of a sensitive nature.”

9. As such, the formal minutes of PEB could not be recorded in view of situation explained in the Affidavit. However, file noting is produced on record, which is at Page No.32 of P.B. which reveals that proposal for transfer of the Applicant amongst other in view of default report was placed before the PEB by none other than N. Ambika, Deputy

Commissioner of Police (Headquarter) on 21.08.2020. Then file was approved by Joint Commissioner of Police (Admin) on 21.09.2020 as seen from file noting. The Commissioner of Police called meeting of PEB on 3rd September, 2020 at 11.00 A.M. There is further noting that PEB approved transfers of Police Personnel against whom default report has been received. At Page No.34 of P.B, there is a list of 10 Police Personnel including Applicant whose matters were placed before the PEB for transfer on account of default report. It is on this background, transfer order has been issued.

10. As such, even if there are no formal minutes of PEB, the fact remains that meeting of PEB was called and all Members unanimously approved the transfer of the Applicant in view of default report. The file noting which is signed by Deputy Commissioner of Police, Joint Commissioner of Police and Commissioner of Police clearly spells that PEB had taken conscious decision to transfer the Applicant. What law requires under Section 22N(2), if the satisfaction of competent authority to transfer Police Personnel in public interest and on account of administrative exigencies. Elaborate reasons or ground is not expected in such matters. Existence of reasons on record is a matter of capable of objective verification. Whereas, satisfaction as to the reasons is matter of subjective satisfaction and subjectivity of satisfaction cannot be gone into by the Tribunal unless it is a case of *malafide* exercise of powers. At the time of hearing, learned P.O. has tendered sealed confidential envelope regarding the said serious lapse of the Applicant, which is pertaining to correspondence made by the Department *inter se* for immediate transfer of the Applicant in view of serious lapse committed by the Applicant. Suffice to say, immediate transfer of the Applicant was necessitated from the point of security of Airport and therefore, PEB unanimously took decision to transfer the Applicant. In such situation, file noting (Page Nos.32 to 34 of P.B.) has to be construed as decision of PEB since it is signed by all Members of PEB. Therefore, absence of formal minutes of

PEB in the facts and circumstances of the matter will not render decision of PEB invalid.

11. True, as emphasized by learned Advocate for the Applicant incident occurred on 19.05.2019, but Applicant's transfer order has been passed on 04.09.2020. The learned Advocate for the Applicant tried to make much capital of delay in passing transfer order stating that there was no such urgency or exceptional case to transfer the Applicant. True, there is delay of more than one year for transfer of the Applicant from the date of incident. However, that itself could not render transfer order illegal in view of clear admission of the lapse on the part of Applicant while working at Emigration Centre on 19.05.2019. It is possible that after incident, his assignment at Emigration Centre was changed and thereafter, his matter for transfer was taken up with general transfers in next year, which were delayed on account of Covid-19 pandemic situation.

12. Needless to mention, where default is serious and immediate transfer is necessitated, the competent authority need not wait for holding an enquiry to find out whether there was misconduct of serious nature and what is needed is the *prima-facie* satisfaction of the authority concerned, as held by Hon'ble Supreme Court in **(Union of India & Ors. Vs. Shri Janardhan Debanath & Anr.) decided on 13.02.2004** wherein in Para No.12, it has been held as under :-

“12. The allegations made against the respondents are of serious nature, and the conduct attributed is certainly unbecoming. Whether there was any mis-behaviour 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 mis-behaviour 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.”

13. Suffice to say, where transfer is due to exigencies of service and for administrative reason, the Tribunal should not interfere therein unless order of transfer is shown in conflict with the Rules or made for ulterior motive or in patent arbitrary exercise of powers. In the present case, it is not so.

14. The learned Advocate for the Applicant raised the issue of discrimination *inter-alia* contending that in the matter of some colleagues of the Applicant working in Emigration Counter, despite some lapses on their part, they were let-off on fine or censure, as seen from some of the orders (Page Nos.60 and 62 of P.B.). True, it reveals that in some cases of negligence in performance of duties while working at Emigration Counter, such order of censure or fine of Rs.500/- was imposed. However, those lapses seem to be not that much serious as in the present case. None of the instance relate to lapses or failure to intercept the subject of LOC. Those lapses seems minor, and therefore, they were let-off on fine or censure. Therefore, the point of discrimination raised by learned Advocate for the Applicant holds no water.

15. The totality of aforesaid discussion leads me to conclude that the challenge to the transfer order is devoid of any merit and O.A. deserves to be dismissed. Hence, the order.

ORDER

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

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai
Date : 27.01.2022
Dictation taken by :
S.K. Wamanse.

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