

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.332 OF 2020

DISTRICT : NASHIK

Shri Anil Bhaurao Patil.)
Age : 51 Yrs., Occu.: Govt. Service,)
Working as Senior Police Inspector,)
Presently attached to Central Police)
Station and R/at : Dream Bungalow,)
Makhmalabad Road, Panchvati,)
Nashik – 422 001.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Home Department, Mantralaya,)
Mumbai – 400 032.)
2. Commissioner of Police.)
Nashik City, Gangapur Road,)
Near to K.T.H.M. College,)
Nashik – 422 002.)...**Respondents**

Mr. K.R. Jagdale holding for Shri Ashutosh Singh, Advocate for Applicant.

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

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 02.03.2021

JUDGMENT

1. The Applicant has invoked jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 challenging the

order dated 26.05.2020 passed by Respondent No.2 – Commissioner of Police, Nashik whereby he was temporarily posted at Control Room, Nashik.

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

The Applicant is Senior Police Inspector. The Respondent No.2 – Commissioner of Police, Nashik by order dated 11.09.2019 transferred him from Economic Offence Wing to Adgaon Police Station on administrative ground. Being in the cadre of Police Inspector, he is entitled to normal tenure of three years as per the provisions of Maharashtra Police Act. However, Respondent No.2 abruptly by order dated 26.05.2020, in view of default report, temporarily shifted him and posted at Control Room, Nashik. The Applicant contends that this amount to mid-term and mid-tenure transfer in contravention of provisions of Maharashtra Police Act. He further contends that the impugned action is punitive and unsustainable in law and facts.

3. Though initially by impugned order dated 26.05.2020 Applicant was temporarily posted at Control Room, Nashik, the subsequent development which had taken place during the pendency of O.A. is that the Police Establishment Board (PEB) in its meeting dated 26.02.2021 considering default report as well as serious misconduct on the part of Applicant invoked Section 22N(2) of Maharashtra Police Act and unanimously resolved to confirm temporary posting of the Applicant as a permanent posting at Control Room, Nashik. Accordingly, Respondent No.2 has produced Additional Affidavit along with minutes of PEB, which is at Page Nos.61 and 62 of P.B.

4. Shri K.R. Jagdale, learned Advocate for the Applicant sought to assail the impugned order dated 26.05.2020 contending that the Applicant was transferred under the guise of temporary posting in utter disregard of the provisions of Maharashtra Police Act. He emphasizes that temporary posting even if warranted in given situation, it should be

for specific short duration, but in the present case, the period of temporary deputation exceeds nine months and it has trapping of transfer from one post to another and unsustainable in law. As regard subsequent development of confirmation of order dated 26.05.2020 as transfer order by PEB as resolved in its meeting dated 26.02.2021, he sought to contend that such course of action is impermissible in law. He submits that Respondent No.2 ought to have cancelled temporary deputation order by reposting the Applicant at Adgaon Police Station, and thereafter only, further course of action for transfer would have adopted. On this line of submission, he submits that basically the order dated 24.05.2020 itself being unsustainable in law, the subsequent decision of PEB would not legalize temporary deputation order dated 26.05.2020. He, therefore, prayed to quash the order dated 26.05.2020 and to repost the Applicant at Adgaon Police Station.

5. Per contra, Shri A.J. Chougule, learned Presenting Officer submits that after posting of Applicant as Senior Police Inspector, Adgaon Police Station, the Applicant's performance was found far from satisfaction. He was behaving in totally irresponsible manner and failed to curb illegal activities and was guilty of insubordination. The Deputy Commissioner of Police, Nashik and Joint Police Commissioner of Nashik had submitted the default reports dated 09.05.2020 and 15.05.2020. The said default reports were placed before the PEB in its meeting dated 26.05.2020 and having regard to serious misconduct on the part of Applicant, shifting of the Applicant from Adgaon Police Station was found necessitated in the interest of public as well as from the point of administration, and therefore, at that time, the PEB resolved to shift him temporarily to Control Room, Nashik. Accordingly, he was temporarily shifted and posted at Control Room, Nashik by order dated 26.05.2020. He has further pointed out that later, the PEB in its latest meeting on 26.02.2021 confirmed the temporary posting of the Applicant at Control Room, Nashik and accordingly, issued fresh order on 26.02.2021

invoking Section 22N(2) of Maharashtra Police Act. He, therefore, submits that the challenge to the order dated 26.05.2020 holds no water.

6. Needless to mention that the transfer is an incident of service and Government servant can be transferred from one place to another place by administrative exigency or in public interest. The Tribunal, therefore, should not interfere in the matter of transfer unless it is an express contravention of law or *malafide*. Where reason for transfer is administrative nature and competent authority acts *bonafide*, the Tribunal should not interfere in such administrative business. At the same time, undoubtedly, where transfer is under the guise of punishment, the interference by judicial forum is must.

7. Insofar as Police Personnel are concerned, their transfers are governed and regulated by Maharashtra Police Act and it is not left to the whims or caprice of executive. The Applicant being Police Inspector, his normal tenure is three years. However, by impugned order dated 26.05.2020, he was shifted and posted at Control Room, Nashik as a temporary deployment/arrangement. As per provisions of Maharashtra Police Act, the general transfers are required to be effected in the month of April or May of every year. Whereas, mid-term transfer means transfer of Police Personnel other than general transfer. As such, the Applicant was displaced from Adgaon Police Station before completion of normal tenure of three years. Section 22N(2) of Maharashtra Police Act empowers the competent authority to effect mid-term transfer of Police Personnel in exceptional cases, in public interest and on account of administrative exigencies. In the present case, the PEB at District level constituted under Section 22J-2 of Maharashtra Police Act is a competent authority for mid-term transfer of the Applicant.

8. The perusal of record reveals that after posting of the Applicant at Adgaon Police Station, there were certain complaints against him and Shri Amol Tambe, Deputy Superintendent of Police, Circle-1, Nashik as well as Shri Pradip Jadhav, Assistant Police Commissioner had

submitted default report dated 15.05.2020 and 09.05.2020 respectively to the Commissioner of Police for appropriate disciplinary action against the Applicant. Indeed, Shri Pradip Jadhav, Assistant Police Commissioner has specifically recommended for transfer of the Applicant from Adgaon Police Station in view of serious misconduct, total incompetence as well as insubordination. Accordingly, meeting of PEB was held on 26.05.2020 and after considering the default report, the PEB resolved to shift the Applicant immediately and he was temporarily posted at Control Room. The default reports are at Page Nos.25 to 28, 29 to 32 and minutes of PEB is at Page No.56.

9. Shri Amol Tambe, Deputy Superintendent of Police, Circle-1, Nashik in his default report dated 15.05.2020 summarized as under :-

“वरील सर्व अहवालांवरून श्री. अनिल पाटील, आडगाव पो. ठाणे यांचे प्रभारी अधीक्षक अधिकारी म्हणून कामगिरीचे अवलोकन केले असता त्यांचे अशासकीय वर्तनामुळे त्यांची विरुद्ध विशेषतः महिला अर्जदारांकडून वरिष्ठांना लेखी तक्रारी प्राप्त झालेल्या आहेत. श्री अनिल पाटील यांचे वर्तनात मागील एक वर्षापासून कोणताही सकारात्मक बदल झाल्याचे त्यांचे वर नमूद अ.क्र. १ ते ७ मधील घटनाक्रमातून दिसून येते. वरिष्ठ अधिकारी यांचे आदेश गांभिर्याने न घेता निष्काळजीपणाची व बेजबाबदारपणाची वर्तणूक करणे, पत्रकारास शिवीगाळ करणे, अभ्यागतांशी अरेरावीने बोलणे, अवैध धंदे सुरू असतानाही स्वतःहून कारवाई न करणे, वरिष्ठांचे आदेशाचे पालन न करणे, भेटीयुक्त गुन्ह्यांचे घटनास्थळी भेट न देता वरिष्ठांना दिशाभूल करणारी माहिती देणे, पोलिस स्टेशनचे कामकाजामध्ये लक्ष नसणे इ. बाबी पाहता वपोनी अनिल पाटील, आडगाव पो. ठाणे यांचे पोलीस स्टेशनचे कायदा व सुव्यवस्था बंदोबस्त व प्रशासकीय कामकाजावर नियंत्रण नसल्याचे स्पष्ट होत आहे. बाबत संदर्भ क्रमांक ८ अन्वये सपोआ, विभाग-२ यांनी अहवाल सादर केला आहे.

संदर्भ क्रमांक १ ते ७ मधील घटनांचे वेळोवेळी अहवाल वरिष्ठांना सादर करण्यात आलेले आहेत. मात्र अद्याप पावेतो एकाही कसुरी अहवाला संबंधाने वपोनी अनिल पाटील, आडगाव पो. ठाणे यांचे विरुद्ध कठोर कारवाई आलेली नसल्याने त्यांना वरिष्ठांकडून होणा-या कारवाईविषयी त्यांचे मनात कारवाईची भीती राहिलेली नसल्याचे दिसून येते. त्यामुळे त्यांचे गैरवर्तणूकीमध्ये सुधारणा होत नसून त्याचा एकूण परिणाम पोलिस स्टेशनचे कामकाजावर व कर्मचार-यांची शिस्त व मनोधैर्यावर होत आहे. करिता, भविष्यात त्यांचे गैरवर्तणूकीमुळे व अकार्यक्षमतेमुळे पोलीस दलाची प्रतिमा आणखी मलिन होऊ नये यासाठी वपोनी अनिल पाटील, आडगाव पो. ठाणे यांचेवर कठोर शासन होणेस विनंती आहे.”

Whereas, Shri Pradip Jadhav, Assistant Police Commissioner in his report dated 09.05.2020 summarized the position as under :-

“श्री. अनिल पाटील वपोनि/आडगाव पो.स्टे. यांचे प्रभारी अधिकारी म्हणून कामगिरीचे अवलोकन केले असता त्यांचे प्रशासकीय वर्तनामुळे त्यांचे विरुद्ध विशेषतः महिला अर्जदारांकडून वरिष्ठांना ब-याच लेखी तक्रारी प्राप्त झालेल्या आहेत. श्री. अनिल पाटील यांचे वर्तनात मागील एक वर्षापासून कोणताही सकारात्मक बदल झाल्याचे त्यांचे वर नमूद क्र. १ ते ७ मधील घटनाक्रमातून दिसून येते. वरिष्ठ अधिकारी यांचे आदेश गांभिर्याने न घेता निष्काळजीपणाची व बेजबाबदारपणाची वर्तणूक करणे, पत्रकारास शिवीगाळ करणे, अभ्यंगतांशी अरेरावीने बोलणे, अवैध धंदे सुरू असतानाही स्वतःहून कारवाई न करणे, वरिष्ठांचे आदेशांचे पालन न करणे, भेटीयुक्त गुन्ह्यांचे घटनास्थळी भेट न देता वरिष्ठांना दिशाभूल करणारी माहिती देणे. पोलिस स्टेशनचे कामकाजामध्ये लक्ष नसणे इ. बाबी पाहता श्री. अनिल पाटील, वपोनी आडगाव पोलीस स्टेशन यांचे पोलीस स्टेशनचे कायदा व सुव्यवस्था बंदोबस्त व प्रशासकीय कामकाजावर नियंत्रण नसल्याचे स्पष्ट होत आहे.

सध्या कोरोना विषाणू कोव्हिड-१९ चे संसर्गामुळे त्याचा प्रादुर्भाव होऊ नये यासाठी केंद्र शासनाचे वतीने दि. २५/३/२०२० पासून देशभरात लॉक डाऊन घोषित करण्यात आलेला असून नाशिक पोलीस आयुक्तालयामध्ये वरिष्ठांच्या आदेशानुसार प्रभावी अंमलबजावणी करण्यात येत आहे. मालेगाव भागात कोव्हिड-१९ चा प्रादुर्भाव मोठ्या प्रमाणात होत असल्याने काही नागरिक भविष्यामध्ये नाशिकच्या दिशेने येण्याची शक्यता असल्याने आडगाव पोलीस स्टेशन हद्दीतील बंदोबस्ताची आखणी व नियोजन करणे आवश्यक आहे. एकूणच त्यांचे वर्तणूकीवरून श्री. अनिल पाटील, वपोनी आडगाव पोलीस स्टेशन हे गंभीर नसल्याचे दिसून येते. त्यांचेकडे वरिष्ठांनी काही विचारणा केली असता आत्महत्या करण्याची धमकी देणे अगर इतर दबावतंत्राचा सर्वास वापर करतात.

संदर्भ क्रमांक १ ते ८ मधील घटनांचे वेळोवेळी अहवाल वरिष्ठांना सादर करण्यात आलेले आहेत. मात्र अद्याप पावेतो एकाही कसुरी अहवालासंबंधाने श्री. अनिल पाटील, वपोनी/आडगाव पो.स्टे. यांचे विरुद्ध कारवाई झालेली नसल्याने त्यांना वरिष्ठांकडून होणा-या कारवाईविषयी त्यांचे मनात कारवाईची भीती राहिलेली नसल्याचे दिसून येते. त्यामुळे त्यांचे गैरवर्तणूकीचे मध्ये सुधारणा होत नसून त्याचा एकूण परिणाम पोलिस स्टेशनचे कामकाजावर व कर्मचा-यांचे शिस्त व मनोधैर्यावर होत आहे.

करिता भविष्यात त्यांचे गैरवर्तणूकीमुळे व अकार्यक्षमतेमुळे पोलीस दलाची प्रतिमा आणखी मलिन होऊ नये यासाठी श्री. अनिल पाटील, वपोनी आडगाव पो.स्टे. यांची त्वरित प्रभावाने आडगांव पो.स्टे. येथून बदली करण्यात येऊन त्यांचे जागी योग्य त्या पोलिस निरीक्षक यांची आडगाव पो.स्टे. प्रभारी म्हणून नेमणूक करणेस आम्ही शिफारस करित आहोत.

सोबत:- संदर्भ क्रमांक १ ते ८ असे जोडले आहेत.”

10. It is on the above background, the PEB in its meeting dated 26.05.2020 shifted the Applicant and temporarily posted him at Control Room, Nashik. Indeed, having regard to the serious nature of allegations and misconduct attributed to the Applicant, that time itself, the PEB could have transferred the Applicant at Control Room instead of giving him temporary posting at Control Room, Nashik. True, there should not be temporary posting under the guise of transfer and to circumvent the provisions of law. However, in the present case, the decision of shifting of the Applicant and temporary posting at Control Room, Nashik was taken by PEB, which was in law empowers to transfer the Applicant mid-tenure. It appears that the continuation of the Applicant at Adgaon Police Station was found highly deleterious to the discipline of Police Force, and therefore, the PEB for the time being shifted him temporarily to Adgaon Police Station. Suffice to say, this is not a case where order of temporary deputation is passed by incompetent authority, so as to stamp it transfer under the guise of deputation.

11. As stated above, during the pendency of O.A, the PEB again convened the meeting on 26.02.2021 and confirmed the earlier order dated 26.05.2020 of posting of the Applicant at Control Room, Nashik. This being the position, now order of temporary posting dated

26.05.2020, which was taken as interim measure is merged in final order dated 26.02.2021 whereby the Applicant is transferred to Control Room, Nashik. True, in order dated 26.02.2021, there is no such specific order of transfer and the order dated 26.05.2020 is said confirmed. In law, it has to be construed as a transfer from Adgaon Police Station to Control Room, Nashik. The decision was taken by PEB invoking Section 22N(2) of Maharashtra Police Act, which *inter-alia* empowers PEB to transfer Police Personnel in exceptional cases, in public interest and on account of administrative exigencies.

12. Needless to mention that in the matter of transfer, it is for the executive to decide desirability of a Government servant at a particular station. If in case of serious misconduct, the continuation of such Government servant at a particular place is found not desirable or against public interest, then in such situation, utmost latitude should be left with the executive to enforce discipline, decency and decorum in public service, which are essential to maintain quality of public service and to meet administrative exigencies.

13. Now turning to the facts of present case, the perusal of record clearly spells that PEB was satisfied that the continuation of the Applicant as Incharge Senior Inspector of Adgaon Police Station was not desirable from the point of administration in view of serious lapses and omissions on the part of Applicant. In such situation, hardly an exception can be taken to such transfer order. There is nothing to indicate that there is any *malafide* in the impugned order.

14. Indeed, the Hon'ble Supreme Court in **(2004) 4 SCC 245 (Union of India and Ors. Vs. Janardhan Debanath & Anr.) decided on 13th February, 2004** held that in transfer matter, the initiation of D.E. for transfer of Government servant should not be insisted upon. The Hon'ble Supreme Court further held that if initiation of regular D.E. is insisted upon before passing order of transfer of a Government servant,

then it would frustrate the very purpose and there would be no discipline as well as probity in public administration.

15. The question whether the Applicant was required to be shifted or transferred to different Police Station or on non-executive post is a matter for executive to consider depending upon the administrative exigency as well as to the extent of solution for the problem created by the concerned Government servant. All that, the requirement is the *prima-facie* satisfaction of the competent authority about undesirability to continue at post. Needles to mention that existence of reasons is a matter capable of objective verification, whereas satisfaction as to reasons is a matter of subjective satisfaction. Once the test of existence is satisfied, the subjectivity of satisfaction cannot be gone into by the Tribunal unless it is a case of *mala-fide* exercise of power and Tribunal cannot substitute its opinion for that of competent authority namely PEB.

16. Reliance placed by the learned Advocate for the Applicant on decision rendered by this Tribunal in **O.A.No.696/2019 (Kishor B. Jagtap Vs. Superintendent of Police, Palghar) decided on 15.10.2019** is misplaced. True, in that case, the Applicant therein was temporarily shifted from Boisar Police Station to Control Room, Palghar. Since temporary deputation continued for a long time, the Applicant had approached the Tribunal by filing O.A. The ensuing election was one of the reason for temporary shifting, which were over long ago, but the Applicant was not reposted. It is in that context, the Tribunal held that such period of temporary deployment cannot be continued for a longer time since it has trapping of transfer and O.A. was allowed. However, material to note that, liberty was granted to PEB that it can transfer the Applicant in accordance to law after reposting him. Indeed, in terms of decision of Tribunal, the Applicant therein was reposted, and thereafter, by fresh decision of PEB, he was again transferred. Whereas, in the present case, it is not so. During the pendency of O.A. itself, the PEB by

way of remedial measures placed the matter again before PEB and confirmed temporary posting order as a transfer for all purposes. Suffice to say, the decision in O.A.No.696/2019 is clearly distinguishable and is of no help to the Applicant.

17. The totality of aforesaid discussion leads me to sum-up that the challenge to the impugned order is devoid of merit 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 : 02.03.2021

Dictation taken by :

S.K. Wamanse.

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