

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.431 OF 2019**

**DISTRICT : PUNE**

Smt. Trupti Bajirao Borate. )  
Age : 32 Yrs, Occu. : Assistant Police )  
Inspector, R/at Nandanvan Vihar Society, )  
Wanavadi, Pune – 411 040. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through the Secretary, )  
Home Department, Mantralaya, )  
Mumbai. )  
2. The Director General of Police. )  
Shahid Bhagat Singh Marg, )  
Colaba, Mumbai. )  
3. The Commissioner of Police. )  
Pimpri-Chinchwad, MIDC, )  
Chinchwad, Pimpri-Chinchwad, )  
Pune – 411 019. )...**Respondents**

**Mr. K.R. Jagdale, Advocate for Applicant.**

**Mrs. K.S. Gaikwad, Presenting Officer for Respondents.**

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

**DATE : 13.09.2019**

## **JUDGMENT**

1. This is the second round of litigation wherein the Applicant has challenged the transfer order dated 20.04.2019 whereby she was transferred from the post of Assistant Police Inspector (API), Dehu Road, Commissionerate of Pimpri-Chinchwad to Konkan Range invoking jurisdiction under Section 19 of the Administrative Tribunals Act, 1985.

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

In earlier round of litigation, the Applicant has challenged her transfer order dated 20.02.2019 whereby she was transferred from the post of API, Dehu Road, Commissionerate of Pimpri-Chinchwad to Konkan Range by filing O.A.170/2019. She was transferred in pursuance of Election Commission's guidelines, which *inter-alia* directed for transfer of officials who would be completing three years in District on or before 31.05.2019 in view of Parliamentary Elections of 2019. In O.A.170/2019, this Tribunal has rejected interim relief to stay the transfer order. Being aggrieved by it, the Applicant had preferred Writ Petition No.2894/2019 before the Hon'ble High Court, which was disposed of on 04.04.2019. In view of statement made by the learned Additional Government Pleader (AGP) before Hon'ble High Court, the impugned transfer order was withdrawn with liberty to the Respondents to consider the case of Petitioner afresh in terms of guidelines dated 16<sup>th</sup> January, 2019 issued by Election Commission of India. On this background, again the matter was placed before the Police Establishment Board (PEB) and the Applicant has been again transferred by order dated 20.04.2019 whereby she was transferred again in Konkan Range. The Tribunal has rejected the interim relief prayed in this O.A. and again, the Applicant approached Hon'ble High Court by filing Writ Petition No.7022/2019 which was disposed of on 4<sup>th</sup> July, 2019 whereby the order passed by this Tribunal has been

confirmed. However, while disposing of the Writ Petition, the liberty was granted to the Respondents to consider whether the Applicant can be accommodated near Pune. Accordingly, by order dated 24<sup>th</sup> July, 2019, the Applicant is posted at Pali, District : Raigad (Konkan Range).

3. Shri K.R. Jagdale, learned Advocate for the Applicant sought to assail the impugned transfer order dated 20.04.2019 contending that the Applicant had joined as API at Manchar on 20.04.2016 and she had not completed till the date of passing the impugned order dated 20.02.2019. He, therefore, submits that the directions of Election Commission of India are not applicable to the present case, and therefore, the impugned order is liable to be set aside. Secondly, he urged that though the Respondents had accommodated several Police Officials within the Commissionerate area on non-executive post, the Applicant has been subjected to discrimination by transferring her out of District. On these two grounds, he assailed the impugned order.

4. Per contra, Smt. K.S. Gaikwad, learned Presenting Officer pointed out that in terms of guidelines issued by Election Commission of India (Page No.184 of Paper Book, dated 16<sup>th</sup> January, 2019), the Officials who have completed three years or would be completing three years on 31.05.2019 were required to be transferred and the Applicant having completed three years was rightly transferred in view of guidelines of Election Commission of India. As regard discrimination, she admits that some Police Personnel though completed tenure of three years were accommodated in Commissionerate area on non-executive post. However, she contends that the Applicant's home town is in Pune District, and therefore, she was required to be transferred in terms of Election Commission of India, which *inter-alia* provides for transfer of such Police Personnel and ground of discrimination holds no water.

5. The Election Commission of India by its letter dated 16<sup>th</sup> January, 2019 issued the guidelines. Para 3 of the letter is material, which is as follows :-

**“3.** Hence, the Commission has decided that no officer connected directly with elections shall be allowed to continue in the present district of posting :-

- (i) if she/he is posted in her/his home district.
- (ii) if she/he has completed three years in that district during last four (4) years or would be completing 3 years on or before 31<sup>st</sup> May, 2019.”

6. At this juncture, it would be apposite to borne in mind the settled legal principles holding the field in the matter of transfer.

7. Following are the guiding principles laid down by the Hon’ble Supreme Court.

“i) The courts should not interfere with the transfer orders which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any statutory rule or on the grounds of malafides. (Mrs. Shilpi Bose & Ors Vs. State of Bihar & Ors. 1991 Supp, (2) SCC 659).

ii) A Government servant holding a transferable post has no vested right to remain posted at one place or the other. Transfer order issued by a Competent Authority does not violate any of his legal rights. (Shilpi Boses’s case (supra).

iii) Who should be transferred where, is a matter for the appropriate authority to decide. Unless the transfer order is vitiated by malafides and is made in violation of any statutory provisions, the court cannot interfere with it. (Union of India & Ors. Vs. S.L Abbas (1993) 4 SCC 357).

iv) Transfer of an employee is not only an incidence inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra in the law governing or conditions of service. (State of Uttar Pradesh & Ors. Vs. Gobardhan Lal (2004) 11 SCC 402).

v) Transfer made even in transgression of administrative guidelines cannot also be interfered with, as it does not confer any legality enforceable rights, unless, it is shown to be vitiated by malafides or made in violation of any statutory provision and so long

as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments (Gobardhan Lal's case supra).

vi) The courts should not deal with transfer orders as if they are appellate authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. They cannot substitute their own decision in the matter of transfer for that of competent authorities of the State. Even allegations of malafides when made must be such as to inspire confidence in the court or based on concrete materials (Gobardhan Lal's case (supra).

vii) Allegation of malafides should not be entertained on the mere making of it or on consideration borne out of conjectures of surmises. (Gobardhan Lal's case (supra).

viii) Except for strong and convincing reasons no interference could ordinarily be made with an order of transfer (Gobardhan Lal's case (supra)."

8. Admittedly, the Applicant was posted at Manchar w.e.f.20.04.2016. As per the guidelines, Para 3(ii) reproduced above, the Official who has completed three years in District or would be completing three years on or before 31<sup>st</sup> May, 2019 was required to be transferred. As such, the cut-off date is 31.05.2019 and not the date of transfer. The process of Parliamentary Elections were to be over by 31<sup>st</sup> May, 2019, and therefore, the cut-off date as 31<sup>st</sup> May, 2019 is crucial. Earlier, the Applicant was transferred by order dated 20.02.2019. However, that order has been already withdrawn by the Respondents as stated above and fresh order has been issued on 20.04.2019. The submission advanced by the learned Advocate for the Applicant that the tenure of the Applicant has to be reckoned from 20.04.2016 to 20.02.2019, which is less than three years cannot be accepted and holds no water. In first place, the first transfer order dated 20.02.2019 is already withdrawn and in this O.A, the challenge is to the transfer order dated 20.04.2019. As per the guidelines issued by Election Commission of India, the Official who would be completing three years on or before 31<sup>st</sup> May, 2019 was required to be transferred, and therefore, material cut-off date is 31<sup>st</sup> May, 2019 and

not the date of transfer. As such, the period of Applicant in Pune District from 20.04.2016 (posting at Manchar) is counted till cut-off date i.e. 31<sup>st</sup> May, 2019, then it comes from more than three years. This being the position, it is manifest that the Applicant would be completing three years on or before 31<sup>st</sup> May, 2019 and was required to be transferred. Suffice to say, the submission advanced by the learned Advocate for the Applicant that she has not completed three years is misconceived.

9. It is in pursuance of the guidelines issued by Election Commission of India, the Applicant was required to be transferred, and therefore, the matter was again placed before the PEB. The perusal of minutes of PEB (Page No.149 of P.B.) reveals that the PEB resolved to transfer the Applicant, as the Applicant would be completing three years on or before 31<sup>st</sup> May, 2019 as well as for the reason that the Applicant's home district is Pune. With these specific reasons, the PEB unanimously resolved to transfer the Applicant.

10. Needless to mention that under Section 22-N(2) of Maharashtra Police Act, the PEB is empowered to transfer Police Personnel mid-tenure in public interest and on account of administrative exigency. Section 22-N(2) reads as follows :-

“(2) In addition to the grounds mentioned in sub-section (1), in exceptional cases, in public interest and on account of administrative exigencies, the Competent Authority shall make mid-term transfer of any Police Personnel of the Police Force.

11. In the present case, the Competent Authority is PEB No.2, as explained in Section 22-N where the Competent Authority for the transfer of Officers upto the rank of Police Inspector is PEB No.2. As such, it is explicit that the transfer of the Applicant was imperative because of administrative exigency as well as in public interest namely for free and fair Parliamentary Elections and no *malafides* or colourable exercise of powers can be attributed in the impugned

transfer. Suffice to say, there is full compliance of Section 22N(2) of Maharashtra Police Act.

12. As regard ground of discrimination, true, some of the Police Personnel though completed three years' tenure, they were accommodated in the District itself on non-executive post. However, the Applicant was transferred out of District and posted in Konkan Range. The factual difference to be noted is that the Applicant's home town is Pune District and that was also one of the ground to transfer the Applicant. It may be noted that as per Clause 3(i) of Election Commission guidelines, the official who is posted in her/his home district was required to be transferred. Whereas, as per Clause (ii) in addition to above ground, the officials who have completed three years in District were also required to be transferred. The PEB in its minutes has specifically recorded that the Applicant's home District is Pune and was working on executive post. This being the position, the transfer of the Applicant was also necessitated. Therefore, the submission advanced by the learned Advocate for the Applicant that the Applicant is subjected to discrimination, is misconceived and holds no water.

13. It is thus manifest that the Applicant's transfer was necessitated on two grounds, firstly – her home district is Pune and secondly – completed three years on or before 31<sup>st</sup> May, 2019. Needless to mention that the Applicant has no vested right to remain on one post forever, as the transfer is an incidence of service. I, therefore, see no legal infirmity in the impugned order.

14. Apart, admittedly, during the pendency of O.A, the Applicant was again transferred and posted at Pali, District Raigad by order dated 24<sup>th</sup> July, 2019 (Page No.175 of P.B.). This subsequent order of posting at Pali is not challenged by the Applicant either by amending the O.A. or by filing independent O.A. Shri Jagdale fairly concede that he has not challenged the subsequent order dated 24.07.2019. As

such, in view of subsequent order dated 24.07.2019, the challenge to the earlier transfer order dated 20.04.2019 does not survive and the O.A. itself has become infructuous. Apart, on merit also, I see no legal infirmity in the impugned transfer order.

15. The totality of aforesaid discussion leads me to conclude that the challenge to the transfer order dated 20.04.2019 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 : 13.09.2019  
Dictation taken by :  
S.K. Wamanse.