

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.457 & 458 OF 2016


DISTRICT : THANE

ORIGINAL APPLICATION NO.457 OF 2016

Shri Anil Bhaurao Patil,)
Aged 46 Yrs, Working as Police)
Inspector at A.C.B., Nashik,)
Sharanpur Road, Near NMC Market,)
Nashik, R/O. "Sayali" Apt.,)
Radhanagar, Panchavati, Nashik.)...**Applicant**

Versus

1. The State of Maharashtra)
through Additional Chief)
Secretary, Home Department,)
Having Office at Mantralaya,)
Mumbai - 400 032.)
2. The Director General and)
Inspector General of Police,)
[M.S.], Mumbai, Having Office)
at Old Council Hall,)
Shahid Bhagatsinh Marg,)
Mumbai - 400 039.)



3. The Superintendent of Police,)
 A.C.B., Nashik, Having Office)
 at Sharanpur Road,)
 Near N.M.C. Market, Nashik.)...**Respondents**

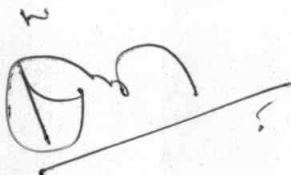
WITH

ORIGINAL APPLICATION NO. 458 OF 2016

- Shri Chandrakant Mahadeo Jadhav,)
 Aged 50 Yrs, Working as Police)
 Inspector at Lonawala City Police)
 Station, R/O. Lonawala, Dist. Pune.)...**Applicant**

Versus

1. The State of Maharashtra,)
 Through Additional Chief)
 Secretary, Home Department,)
 Having Office at Mantralaya,)
 Mumbai - 400 032.)
2. The Director General and)
 Inspector General of Police,)
 [M.S.], Mumbai, Having office)
 at Old Council Hall,)
 Shahid Bhagatsinh Marg,)
 Mumbai - 400 039.)
3. The Superintendent of Police,)
 Pune [Rural], Having Office)



at Chavan Nagar, Pashan Road,
Pune-8.

)
)....Respondents

Shri B.A. Bandiwadekar, Advocate for Applicants.

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

P.C. : R.B. MALIK (MEMBER-JUDICIAL)

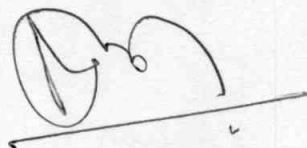
DATE : 06.10.2016

JUDGMENT

1. These 2 Original Applications (OAs) impugn separate orders by which the Applicants came to be transferred mid-tenure. In the 1st OA, the impugned order is dated 24.5.2016 issued by the Special Director General of Police (Establishment) for Director General of Police while in the 2nd OA, the impugned order is made by the Director of Police on that very day.

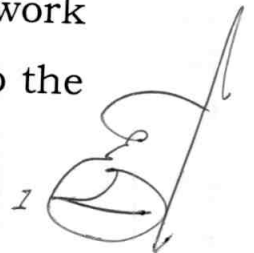
2. I have perused the record and proceedings and heard Mr. B.A. Bandiwadekar, the learned Advocate for the Applicants and Mr. A.J. Chougule, the learned Presenting Officer for the Respondents.

3. These two OAs can be decided by reference to a detailed Judgment rendered by me in deciding by common



Judgment in OA Nos.466 & 467/2016 (Shri Arun R. Pawar Vs. State of Maharashtra and 2 others and one another OA on 12.7.2016). The facts were practically identical.


4. As far as 2nd OA is concerned, it is very clear that even as the impugned orders whereunder a large number of Police Personnel came to be transferred was what has been described as "General Transfers of 2016" (सार्वत्रिक बदल्या). The Applicant in that OA came to be transferred from Pune Rural to Thane City. The perusal of the record of the said 2nd OA will show quite clearly that the Applicant in that particular matter came to be transferred from Police Station Lonikand to Lonawala City Police Station (Pune Rural) by the order of 1st March, 2016. It is quite clear, therefore, that the Applicant having not made any request for transfer in any manner nor any legally sustainable reason being there, he was not due for transfer and really speaking, nothing more needs to be said or done about his OA except to allow it for the asking. The matter was placed before me for interim relief on 30rd May, 2016. I noted therein the case of the Respondents that the said Applicant had completed his tenure was based on erroneous assumption. I was in fact so minded as to work out that OA then and there, but ultimately, I yielded to the



request of the learned Presenting Officer (PO), who wanted to file the Affidavit. I, however, directed that till further orders, the Applicant could not be compelled to relinquish the post held by him at that time and which he holds even now and he would not be relieved and if any, such order was already made, it would be treated as *non-est*.

5. This being the state of affairs, as already mentioned above, nothing needs to be said or done as far as OA 458/2016 is concerned. I have, however, taken up for decision both the OAs because certain principles though not directly applicable in OA 458/2016 could still be relevant to be noted and it would be better for facility as well.

6. Turning now to the 1st OA being OA 457/2016, by the impugned order, as many as 70 Police Personnel came to be transferred, most of them being Police Inspectors. A copy of the said order is at Exh. 'A', dated 24.5.2016 (Page 19 of the Paper Book (P.B)). It is clearly mentioned therein in Marathi that all those transfers including that of the present Applicant whose names appear at Serial No.17 were mid-tenure (मुदतपूर्व बदल्या). There is a small preface which referred to the provisions of Section 22-N(2) of the Maharashtra Police Act, 1951 as



amended on 6.4.2015. It is indicated therein as if those transfers were made in exceptional cases in public interest and for administrative exigencies and while doing so the report of the superiors of the said Officers had been taken into consideration by the Police Establishment Board No.2 (the said PEB hereinafter).

7. I have already referred to **Arun Pawar** (supra) and the name of the said Shri **Arun Pawar** is also there at Serial No.63 in Exh. 'A', and therefore, I indicated at the outset that the principles based on which that particular OA was decided would be applicable hereto as well.

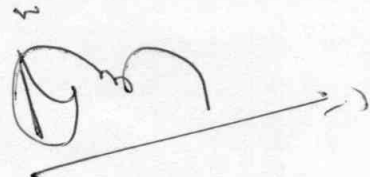
8. The Applicant has challenged the impugned transfer on several grounds from 6.8 to 6.28. However, in as much as and to repeat, this OA shall be governed by **A.R. Pawar's OA** (supra), it may not be necessary for me to mention all those grounds except for the one raised by Shri Bandiwadekar that in as much as this Applicant was in a special Branch, the concurrence of the head of that Branch or at least knowledge to him was also necessary.

9. The sum and substance of the case of the Respondents by the Affidavit of Shri Anil P. Sawant, a Desk Officer in the Office of the Director General of Police who



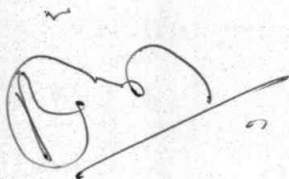
filed the similar Affidavit in **A.R. Pawar's** case (supra) as well and the Affidavit-in-reply of Nitin B. Deshmukh, API (one step Police Inspector), ACB, Nashik is that the record of the Applicant in the present posting left much to be desired and adverse comments were made by his superiors.

10. In the above background, I may now turn to **A.R. Pawar** (supra). In Para 4 thereof, I noted that the Respondents relied upon a Judgment of the Hon'ble Supreme Court which they relied upon in these OAs as well in the matter of **Appeal (Civil) 1010-1011/2004 (Union of India and others Vs. Sri Janardhan Debanath and Anr., dated 13.2.2004 (SC)(Coram : His Lordship the Hon'ble Shri Justice Doraiswamy Raju & His Lordship the Hon'ble Shri Justice Arijit Pasayat)**. The case of the Respondents was further noted in Para 5. **Janardhan Debanath** (supra) was discussed in detail in Paras 26 and 27 and it was noted as to how the present facts were governed by the Judgments of the Hon'ble Supreme Court in **Prakash Singh and others Vs. Union of India and others, (2006) 8 SCC Page 1 (Prakash Singh's case)**. In deference thereto, the law was amended and I repeatedly mentioned in that Judgment that the history preceding the said enactment in the form of law laid down



by the Hon'ble Supreme Court in **Prakash Singh's** case will have to be borne in mind. I also recorded in **A.R. Pawar's** case another Judgment of the Hon'ble Supreme Court in **Somesh Tiwari Vs. Union of India, 2009 (3) SLR 506 (SC)** and fully quoted Para 20 thereof which laid down the principle that the power to effect transfer should not be so used or utilized as to make it a punitive transfer. The said Para 20 can now be reproduced.

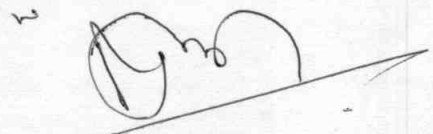
“20. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal.”

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11. In Para 10 of **A.R. Pawar's** case, I noted the fact that the Principal Secretary, Home (Appeal & Security) who was the only non-Police Government representative in the said PEB was not present in the meeting and maybe, he was not even informed thereabout. My observations in that behalf were adverse to the Respondents. I then took note of the amended provisions of the Maharashtra Police Act from Paras 11 to subsequent Paragraphs and reproduced Section 22-N(1)(c) in so far as the term, "competent authority for general transfers" was concerned and in that connection, I ultimately held that mid-tenure transfers could be made by the Government and in the circumstances therein mentioned by the Hon'ble Chief Minister. I referred to certain other Judgments in the field and ultimately held that the impugned order of transfer in so far as it related to the said Applicant was unsustainable and the Original Application was allowed.

12. An application for review was moved against that order on behalf of the Respondents which was R.A.18/2016. It was rejected by me.

13. The above discussion would, therefore, make it quite clear that there are absolutely no distinguishing factual features in this OA when compared with **A.R.**

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Pawar (supra), and therefore, these OAs also will have to be decided in line therewith.

14. For the foregoing, the orders impugned in these two OAs stand hereby quashed and set aside. The Applicants in both these OAs shall be allowed to continue to hold the posts that they were transferred from till such time as they become legally and as per the Rules liable to be transferred. These Original Applications are allowed in these terms with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
06.10.2016

Mumbai

Date : 06.10.2016

Dictation taken by :

S.K. Wamanse.