

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.469 OF 2016

DISTRICT : KOLHAPUR

Shri Niranjan R. Ranaware.)
Age : 30 Yrs, Working as Assistant Police)
Inspector, Residing at 3rd Floor, Rajni)
Terraces, 6th Lane, Rajarumpuri,)
Kolhapur.)...**Applicant**

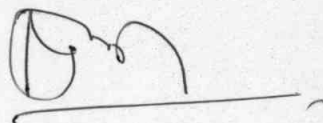
Versus

1. The State of Maharashtra.)
Through Chief Secretary,)
Mantralaya, Mumbai - 400 032.)
2. Additional Chief Secretary,)
Home Department, Mantralaya,)
Mumbai 400 032.)
3. The Director General of Police,)
M.S, Shahid Bhagatsing Marg,)
Colaba, Mumbai 411 001.)...**Respondents**

Smt. Punam Mahajan, Advocate for Applicant.

Smt. K.S. Gaikwad, Presenting Officer for Respondents.

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



DATE : 22.09.2016

JUDGMENT

1. This Original Application (OA) is moved by an Assistant Police Inspector (API) who is stung by the mid-tenure transfer that he has been subjected to and he wants quashing and setting aside thereof in so far as he was concerned. He has been transferred from Karveer Police Station, Kolhapur to Nagpur City.

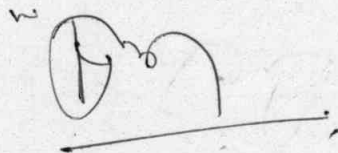
2. I have perused the record and proceedings and heard Smt. Punam Mahajan, the learned Advocate for the Applicant and Smt. K.S. Gaikwad, the learned Presenting Officer for the Respondents.

3. Be it noted right at the outset that this particular OA is in fact fully covered by as many as 5 Judgments of this Tribunal rendered of late. They are **OA 466/2016 and 467/2016 (Arun R. Pawar Vs. State of Maharashtra and 2 ors., dated 12.7.2016)** rendered by me whereagainst an application for review being Review Application No.18/2016 was moved and dismissed on 10.8.2016 by me. Another final order was in **OA 505/2016 (Shri Ravindar B. Badgujar Vs. State of Maharashtra and 3 others, dated 9.8.2016)** by the



Hon'ble Vice-Chairman. Then, there was a fasciculus of OAs, the leading one being **OA 446/2016 (Shri S.B. Deokar Vs. State of Maharashtra & others and other OAs) decided by me on 26.08.2016.** Another Judgment was rendered by the Hon'ble Vice-Chairman in a fasciculus of OAs, the leading one being **OA 471/2016 (Shri Appasaheb B. Lengare Vs. State of Maharashtra and 3 others & other OAs, dated 26.8.2016).** The Applicants in all those OAs were similarly placed although a majority of them were PIs, but a few of them were like the present Applicant APIs as well. In all those matters just as in the present one, it was a case of mid-tenure transfer and the provisions of Section 22-N of Maharashtra Police Act and its various Sub-sections and Sub-clauses arose for consideration. As I mentioned just now, all those OAs in so far as the facts and the legal issues are concerned were exactly like the present one.

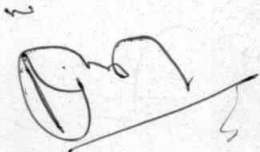
4. It must be said to the credit of Mrs. K.S. Gaikwad, the learned P.O. that even then, she tried her best to salvage the case of the Respondents by inviting reference to the fact that there were adverse comments of S.P. against the Applicant which became the cause of his transfer and she also relied upon the Judgment of the Hon'ble Supreme Court in **Appeal (Civil) 1010-2011 of**



2004 (Union of India and others Vs. Shri 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).

Now, all these points that are raised here again by the learned P.O. were raised in those other OAs including **Arun Pawar's** case and they were appropriately dealt with. The Judgment of the Hon'ble Supreme Court in **Janardhan Debanath's** case was considered in that matter in Para 26 as well as in other Paras. It was pointed out as to how different Rules governed that matter and further as to how the Judgment of **Prakash Singh and others Vs. Union of India and others (2006) 8 SCC Page 1 and Somesh Tiwari Vs. Union of India, 2009 (3) SLR 506 (SC) (Para 20)** were the rulings that govern **Arun Pawar's** matter, and therefore, this matter as well. In fact, the principles laid down by the Hon'ble Supreme Court in **Janardhan Debanath** (supra) also, when applied to the present facts would lead to the conclusion that was drawn in **Arun Pawar** (supra) and in fact, in this OA as well.

5. It is, therefore, very clear that absolutely no distinguishing feature are there in this OA from those OAs that came to be decided as detailed hereinabove. As far as the present position is concerned, by an order made at



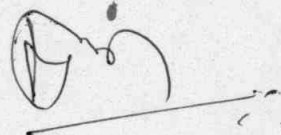
interim stage by me on 2.6.2016. I had given the following directions in Para 5.

“Heard Smt. Punam Mahajan, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

2. The applicant has been transferred from Kolhapur to Nagpur which has stung him. I have heard the rival submissions. Smt. Mahajan, Ld. Advocate for the applicant furnishes for my perusal the ACR of the period from 7.8.2014 to 21.3.2015 where the applicant was rated as ‘B’ Positively Good and the cause for mid-tenure transfer is that he is exhibiting lack of interest and of negative approach. It is pointed out that the applicant has had a stint at Naxal affected Gadchiroli District for 3 years. Smt. Mahajan, Ld. Advocate is aggrieved by the fact that he was still not given choice posting and from Kolhapur also he is being subjected to mid-tenure transfer.

3. Ld. PO submits that the procedure has been properly followed and she does not have any real answer to a slight incongruity in respondents’ case that having rated the applicant ‘B’ Positively Good he has still been subjected to the mid-tenure transfer in the cause mentioned above.

4. Ld. PO submits that the applicant had soon after the impugned order made a representation on 25.5.2016 itself and even as it has not been decided he has rushed to this Tribunal with this OA. As far to this submission of the Ld. PO, I find that going by the express language of Section 20 of the Administrative Tribunals Act, 1985 with particular emphasis on the word, “ordinarily” it is clear that there is no total bar or embargo to the entertainment of the OA even if the administrative avenues are not




exhausted. It by and large a point which is fact specific.

5. The OA was lodged on 28.5.2016 and there is no reason why the representation of 25.5.2016 should not have been attended to promptly. Now, in the context of the above discussion, I direct the respondent no.3 to decide the representation above referred to by 8.6.2015 and communicate its decision to the applicant immediately within 24 hours. If the representation is not decided as above then it should be taken that the impugned order shall be stayed by way of mandatory relief even at interlocutory stage and the applicant will be reposted to the post at Karveer Police Station, Kolhapur on 9.6.2016. It is made clear that even if the decision is adverse it will not be binding on this Tribunal and regardless of ultimate outcome the matter will be placed for further consideration on 14.6.2016. S.O. to 14.6.2016. Hamdast.”

6. I am informed at the Bar that the directions having not been complied with, the Applicant continues to be serving at Karveer Police Station, Kolhapur.

7. The upshot, therefore, is that this OA will have to be allowed in the same line as were the other OAs discussed hereinabove. The order of transfer herein impugned in so far as it relates to the Applicant stands hereby quashed and set aside and the Applicant's present posting shall continue till such time as he becomes due for



transfer. The Original Application is allowed in these terms with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
22.09.2016

Mumbai
Date : 22.09.2016
Dictation taken by :
S.K. Wamanse.

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