

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION 505 OF 2016

DISTRICT : PALGHAR

Shri Ravindra Baliram Badgujar)
Working as Police Inspector,)
Residing at A-27, Tower No. 1,)
Kamgarnagar, Kurla [E],)
Mumbai 400 024.)...**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,)
Maharashtra State, S.B Marg,)
Colaba, Mumbai 411 001.)
4. The Superintendent of Police,)
Palghar.)...**Respondents**

24

Smt Punam Mahajan, learned advocate for the Applicant.

Shri N.K. Rajpurohit, learned Presenting Officer for the Respondents no 1 to 3.

Shri Ravi Shetty, learned advocate for Respondent no. 4.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

DATE : 09.08.2016

ORDER

1. Heard Smt Punam Mahajan, learned advocate for the Applicant, Shri N.K. Rajpurohit, learned Presenting Officer for the Respondents no 1 to 3 and Shri Ravi Shetty, learned advocate for Respondent no. 4.

2. This Original Application has been filed by the Applicant challenging the order dated 24.5.2016 transferring him from Palghar to Nagpur City.

3. Learned Counsel for the Applicant argued that the Applicant was posted by order dated 25.5.2014 from Greater Mumbai to Thane (Rural) as Police Inspector. He joined in Thane (Rural) at Nalasopara Police Station on 6.6.2014. After bifurcation of Thane District, Nalasopara Police Station came to Palghar District. Learned Counsel for the Applicant stated that as per section 22(N)(1)(c) of the Maharashtra Police Act, the Applicant is entitled to

have a tenure of four years in a district and eight years in a Range. The Applicant has not completed 4 years in Palghar District. Learned Counsel for the Applicant argued that this Tribunal by order dated 12.7.2016 in O.A no 466 & 467 of 2016 has held that the Police Establishment Board No. 2 has no powers to transfer a Police Personnel before completion of his tenure. Learned Counsel for the Applicant stated that there was no application of mind by PEB-2, while approving transfer of 70 officers, before completion of their tenure. No reasons for transferring these officers are mentioned in the order. Even minutes of PEB-2 meeting do not disclose any reasons for transfers. Only independent member of the PEB-2, viz Principal Secretary of Home Department was not even invited for the meeting. Decision to transfer 70 officers was taken in 5 hours. All these facts go a long way in establishing that PEB-2 was not constituted properly and did not apply its mind. Learned Counsel for the Applicant stated that the Respondent no. 4, viz. Superintendent of Police, Palghar has sent a report recommending transfer of the Applicant outside district on 17.5.2016. However, the report dated 1.2.2016, submitted by the Respondent no. 4 to the Special Inspector General of Police, Konkan Range, Navi Mumbai does not disclose any allegation against the Applicant. It is stated that in eight months three trap cases under the Prevention of Corruption Act were registered against the personal staff of the Applicant. It was alleged that the

Applicant did not have control over his staff and he was found to be lacking in supervision over his staff. Learned Counsel for the Applicant stated that cases under the Prevention of Corruption Act were registered against the personal staff of other officers also, but the Respondent no. 4 did not recommend their transfers. There were three traps against the staff of Shri Sunil Mane, Police Inspector, Virar Police Station. However, he was not recommended for out of district transfer. Similarly, in case of Shri Sanjay Hajare, Police Inspector, two traps were laid against his personal staff. One trap was laid against the staff of Police Inspector, Shri Birajdar. There was a trap against the clerical staff of the Superintendent of Police office also, for which the Respondent no. 4 had not taken any personal responsibility. Learned Counsel for the Applicant argued that the report of the Respondent no. 4 is discriminatory and only the Applicant has been singled out for transfer. Such an action is not sustainable, and the Applicant cannot be punished for the crimes of his staff. Learned Counsel for the Applicant argued that the Applicant's wife is suffering from 'myasthenia gravis' and requires emergency treatment. On that ground also, he should not have been transferred to Nagpur. Learned Counsel for the Applicant stated that a false statement is made in the affidavit in reply of the Respondent no. 4 dated 5.7.2016. It stated in para 16 that his 'Orderly' was trapped accepting bribe inside the Police Station when the Applicant was present

in his office. This is absolutely false as the Applicant was with Additional S.P in Ambiwali, Tal-Kalyan on that day. Learned Counsel for the Applicant argued that the transfer order of the Applicant has been issued in violation of Section 22N of the Maharashtra Police Act and it may be quashed and set aside.

4. Learned Chief Presenting Officer (C.P.O) argued on behalf of the Respondent nos 1 to 3 that this Tribunal has powers of judicial review, scope of which is quite limited. Hon'ble Supreme Court has held that in Transfer cases, a Court/Tribunal can interfere only when (a) there is violation of a statutory provision, (b) the order is passed by an authority not having competence to do so and (c) when the order is malafide. This is held by Hon'ble Supreme Court in the case of **Mrs SHILPI BOSE Vs. STATE OF BIHAR & ORS : (1991) AIR SC 532.** Learned C.P.O argued that under the Maharashtra Police Act, a mid-term transfer covers a mid-tenure transfer also. In fact, the term mid-tenure transfer is nowhere defined in the Act. Also, powers of the State Government are separate and distinct from the powers of the Police Establishment Boards at different levels. Police Establishment Board No. 2 (P.E.B-2) has powers to transfer a Police Officer at the level of Police Inspector, before he has completed his tenure, for the reasons mentioned in Section 22N (2) of the Maharashtra Police Act. Learned C.P.O argued that absence of one of the



Members of the Police Establishment Board will not invalidate the proceedings. This has been held by this Tribunal in many cases. The Applicant was transferred as there was a report against him dated 17.5.2016 from the Respondent no. 4. Learned Chief Presenting Officer argued that this report disclosed that the Applicant did not have proper supervisory control over his subordinate and was negligent in discharge of his duties. Learned Chief Presenting Officer argued that there are unwritten standing orders in Mumbai City that if an A.C.B trap is laid against the subordinate staff, Senior Police Inspector of that Police Station is immediately transferred. In the present case, three traps were laid against subordinate staff of the Applicant, and P.E.B-2 has taken serious note of it. Learned C.P.O relied on the judgment of Hon'ble Supreme Court in the case of **UNION OF INDIA & ORS Vs. SRI JANARDHAN DEBANATH & ANR, in Special Appeal no. 1010-1011 of 2004**, Hon'ble Supreme Court has held that:-

“For the purposes of effecting a transfer, the question of holding an enquiry to find out whether there was misbehavior 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 an ensure probity would get frustrated.”

Learned Chief Presenting Officer argued that transfer order of the Applicant is valid in the light of aforesaid judgment of Hon'ble Supreme Court.

5. Learned Advocate Shri Ravi Sheety, argued on behalf of Respondent no. 4 that the Respondent no. 4 has submitted a recommendation to the Respondent no. 3 on 17.5.2016, recommending the transfer of the Applicant out of Palghar District. The powers to transfer a Police Inspector level officer outside district or zone vests in P.E.B-2. Learned Advocate Shri Shetty stated that P.E.B-2 has considered reports about all 70 officers including the Applicant who were transferred by order dated 24.5.2016. It is not necessary to spent hours to discuss each and every case. If the decision is taken after discussing cases in brief, it cannot be said that there was no application of mind. Learned Advocate Shri Shetty stated that the transfer of the Applicant is not punitive. In JANARDHAN DEBNATH's case (supra), Hon'ble Supreme Court has held that a transfer is punitive only if there is loss of seniority or status. In the present case, there is no loss of seniority or status. The transfer order is not stigmatic. This Tribunal's jurisdiction is akin to



jurisdiction of Hon'ble High Court under Article 226 of the Constitution. This Tribunal has to satisfy itself whether there was some material before P.E.B-2. Learned Advocate Shri Shetty relied upon the judgment of Hon'ble Bombay High Court in the case of **SANJEEV B. KOKIL Vs. STATE OF MAHARASHTRA : (2013) 2 Mh.L.J 107**. Hon'ble High Court has held that:-

“The reason is found in the order itself. The fact that the reason noted as “for administrative reason”, can be no less an exceptional circumstance or special reason or for that matter, as a special case. Whether the reason which weighed with the Authority for arriving at subjective satisfaction would qualify it as exceptional circumstance or special reason or a special case, would depend on facts of each case. It is not possible to computerize or reduce into immutable formulae the diverse consideration on the basis of which this discretion must be exercised. Administrative reason, as aforesaid, is no less special reason or exceptional exigency to be redressed.”

Learned Advocate Shri Shetty stated that intention of the Legislation is to protect sincere and honest officers and no protection should be granted to others. Learned Advocate Shri Shetty stated that if the Applicant is alleging malafide, the person concerned has to be made a

party by name. The allegation of malafide against the Respondent no. 4 has to be ignored as she has not been made a party by name by the Applicant. The Respondent no. 4 had recommended action against the Applicant as his 'Writer' was caught taking bribes. This was the distinguishing factor, between his case and other P.Is whose staff was caught taking bribe. Learned Advocate Shri Shetty cited the following judgments:-

(1) E.P. ROYAPPA Vs. STATE OF TAMIL NADE & ANR : (1974) 4 SCC 3.

It was held that there is no hostile discrimination in transfers from one post to another when the posts are of equal status and responsibility.

(2) REGISTRAR GENERAL, HIGH COURT OF JUDICATURE AT MADRAS Vs. R. PERACHI & ORS (2011) 12 SCC 137.

It was held that the transfer of a permanent employee along with the consequent transfer of his lien cannot be challenged when the transfer is to a permanent post in the same cadre not carrying less pay, even if such transfer materially affects chances of promotion.

**(3) ALL INDIA STATE BANK OFFICERS
FEDERATION & ORS Vs. UNION OF INDIA : JT 1996(8)
S.C 550.**

It was held that the person against whom malafide is alleged must be made a party to the proceedings.

**(4) OM KUMAR & ORS Vs. UNION OF INDIA : (2001)
2 SCC 386.** It was held by Hon'ble Supreme Court that:-

“26. Lord Greene said in 1948 in the Wednesbury case that when a statute gave discretion to an administrator to take a decision, the scope of judicial review should remain limited. He said that interference was not permissible unless one or the other of the following conditions were satisfied, namely, the order was contrary to law, or relevant factors were not considered, or irrelevant factor were considered, or the decision was one which no reasonable person could have taken. These principles were consistently followed in the U.K and in India to judge the validity of administrative action.”

6. Learned Chief Presenting Officer has relied on the judgment of this Tribunal dated 19.12.2014 in O.A nos 897 to 904 of 2014.

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7. Learned Counsel for the Applicant relied on the following judgments:-

(1) PRAKASH SINGH Vs. UNION OF INDIA 2006 (8) SCC 1.

It was directed by the Hon'ble Supreme Court that Police Officer from the level of I.G to Station House Officer, in charge of a Police Station shall have a minimum tenure of two years unless it is found necessary to remove them prematurely following disciplinary proceedings against them or their conviction in a criminal offence or in a case of corruption. Police Establishment Boards were to be established.

(2) M.S GILL Vs. CHIEF ELECTION COMMISSIONER : 1978 (1) SCC 405.

It was held by Hon'ble Supreme Court that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise.

(3) SOMESH TIWARI Vs. UNION OF INDIA, 2009 (3) SLR 506 (SC). It was held that:-



“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.”

(4) **RAMAKANT B. KENDRE Vs. STATE OF MAHARASHTRA & ANR : 2012 (1) Mh.L.J 951.** Hon'ble Supreme Court has held that:-

“For the sake of repetition, we reiterate that such a transfer, either of Respondent no. 2 or the Petitioner which is a subject matter of the present petition, could be done only in exceptional circumstances for special reasons and that too by recording the reasons in writing. We find that no such reasons or circumstances of whatsoever nature are recorded in the impugned transfer order and also in the impugned order passed by the Learned Maharashtra Administrative Tribunal. Therefore, the only course that is available to us is to find out

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the reasons from the impugned transfer order dated 8th July, 2011. The only reasoning given is “in the ‘public interest’ and ‘administrative convenience’ when the Maharashtra Transfer Act stipulates recording of reasons, first it has to be recorded in the original file. If any transfer which takes away the right guaranteed to an employee of not being transferred prior to completion of his tenure is allowed, only by stating that it is in the ‘public interest’, or on the ground of ‘administrative exigency’ then it would frustrate the very purpose of the Act and makes the provisions of such Act redundant. In our view, it is necessary to record at least some reason as to how ‘a special case is made out’.

(5) **O.A no 191 of 2015, dated 26.10.2015.** The transfer of the Applicant in that Original Application was not covered by any of the contingencies under Section 22N(2) of the Act and it was held to be invalid.

(6) **Writ Petition no. 9781 of 2014, dated 17.12.2014.** It was held that:-

“It is always open to the Government to transfer an employee pending a disciplinary action. But without taking any disciplinary enquiry if a transfer is

effected then it will be a transfer whose foundation will be based on misconduct.”

(7) Learned Counsel for the Applicant also cited judgment of this Tribunal in **O.A nos 466 & 467 of 2016, dated 12.7.2016.**

The role of the Respondent no. 4 in the transfer of the Applicant is first examined. It is seen that the Applicant in para 6, 18, 12 of the Original Application had stated that to the best of his knowledge the Superintendent of Police, Palghar (Respondent no. 4) had not sent any adverse report. However, in the affidavit in reply of the Respondent no. 3 dated 28.6.2016, it was stated in para 3.2 that a report from S.P, Palghar dated 17.5.2016 was received. In the affidavit in rejoinder dated 11.7.2016, the Applicant has alleged arbitrary and discriminatory treatment at the hands of the Respondent no. 4 on the basis of Exhibit R-1 attached to the affidavit in reply of the Respondent no. 4 dated 5.7.2016 (page 55 of the paper book). In this document, the Respondent no. 4 has given details of the traps laid down by the Anti Corruption Bureau (A.C.B), catching personal staff of the Applicant and Shri Sunil Mane, Police Inspector, Virar Police Station, Shri Sanjay Hajare, Police Inspector, Wada Police Station and Shri Birajdar, Police Inspector, Manikpur Police Station. It was stated in the affidavit in reply that 3 separate anti corruption cases were

registered against the staff of Nalasopara Police Station, including one against his 'Writer', who is more or less in the position of Personal Assistant. The claim of the Applicant is that the Respondent no. 4 recommended only his transfer out of district, while making no such recommendation regarding other P.Is, like S/Shri Mane, Hajare and Birajdar.

8. Learned Advocate Shri Shetty argued that in the case of S/Shri Mane, Hajare and Birajdar, their 'Writer' were not trapped and that is the important distinction. Learned Counsel for the Applicant stated that staff working in the office of Respondent no. 4 was also trapped by the A.C.B and that fact cannot be said to indicate slack supervision or negligence in discharge of duties on the part of the officer. Though the Respondent no. 4 has sought to distinguish the case of the Applicant from other Police Inspectors, the only fact which is stated is that one of the staff member trapped in the office of the Applicant was his 'Writer'. I do not find this explanation to be very convincing. I do not find any qualitative difference between the case of the Applicant on one hand and the other Police Inspectors like S/Shri Mane, Hajare and Birajdar on the other. The claim of the Applicant that he has been treated in a discriminatory manner by the Respondent no. 4 has to be treated as correct. The Applicant has also claimed that he was not present in the Police Station when his orderly was trapped, as claimed

by the Respondent no. 4 in para 16 of the affidavit in reply. The Respondent no. 4 should have been more careful while making such allegations on oath. Learned Advocate Shri Shetty has relied on the judgment of the Hon'ble Supreme Court in the case of **ALL INDIA STATE BANK OFFICERS FEDERATION** (supra) regarding malafide alleged by the Applicant. However, the Applicant has not made any allegation of malafide against the Respondent no. 4. He has only claimed arbitrary and discriminatory treatment meted out to him by the Respondent no. 4.

9. Now, the impugned order dated 24.5.2016 is examined. This order reads:-

“उपरोक्त संदर्भात नमूद केल्याप्रमाणे महाराष्ट्र पोलीस अधिनियम, १९५१ मधील कलम-२२ न मधील पोट कलम (२) सह सन २०१५ चा महाराष्ट्र अधिनियम क्र.११, दिनांक ०६/०४/२०१५ मधील पोट कलम (२), मधील सुधारीत स्पष्टीकरणानुसार पोलीस आस्थापना मंडळ क्र.२ यांना अपवादात्मक प्रकरणांमध्ये जनहितार्थ आणि प्रशासनिक निकडीनुसार सक्षम प्राधिकारी म्हणून प्रदान असलेल्या अधिकारांचा वापर करून खालील नमूद निःशस्त्र पोलीस निरीक्षकांच्या त्यांच्या नावांसमोर दर्शविल्याप्रमाणे बदल्या करण्यात येत आहेत. सदरहू बदल्या करताना खालील नमूद निःशस्त्र पोलीस निरीक्षकांच्या बाबतीत संबंधीत घटकप्रमुखांकडून प्राप्त झालेल्या अहवालांचा विचार पोलीस आस्थापना मंडळ क्र.२ यांनी केल्यानंतर खाली नमूद केल्याप्रमाणे त्यांच्या मुदतपूर्व बदल्या जनहितार्थ आणि प्रशासनिक निकडीनुसार करण्यात येत आहेत.”

This order states that there were exceptional circumstances to transfer the officer covered in that order. However, what those exceptional circumstances

24


are not mentioned at all. Hon'ble Bombay High Court in the case of R.B. KENDRA (supra) has held that such an action (mid-term transfer without mentioning reasons) would frustrate the very purpose of the Act and make the provisions of the Act redundant. Though this judgment is in the context of the Maharashtra Government Servants Regulation of Transfer and Prevention of Delay in Discharge of Official Duties Act, 2005 (the Transfer Act), the facts are fully applicable in the present case also. On this ground only the impugned transfer order is unsustainable. In M.S. GILL's case (supra), Hon'ble Supreme Court has held that the validity of the impugned order has to be judged by reasons mentioned in the order itself and the fresh reasons cannot be supplemented in the shape of affidavit. In the present case, the affidavit in reply of the Respondent no. 3 has given the reasons for transferring the Applicant. In case of the Applicant, it is default report from the Respondent no. 4 dated 17.5.2016. It has already been observed that by this report, the Respondent no. 4 has practiced discrimination against the Applicant. However, there is nothing on record to suggest that this report was ever actually considered by the P.E.B-2. This Tribunal in O.A nos 466 and 467 of 2014 by judgment dated 12.7.2016 has examined the transfer of the Applicants in those Original Applications by the same impugned order dated 24.5.2016. The observations in that judgments are applicable in the present case also. The issue regarding

scope of judicial review and the implication of judgment of Supreme Court in the case of PRAKASH SINGH (supra) are discussed as below:-

“5. The issues herein involved including the one under consideration befall the ambit of the provisions of the Maharashtra Police Act, 1951 as amended from time to time including on 6th April, 2015. The rest of the provisions are also important, but the pivotal provision herefor is Section 22(N) of the said Act. It cannot be disputed that in a historical perspective, as a result of the judgment 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)**, the State Government constituted what has come to be known as Police Establishment Board (to be hereinafter called Board). Be it noted at this stage itself that transfer is one aspect of the service condition of the Government employees and in this case Police Personnel which has engaged of late the attention of the society, and therefore, of all the 3 wings of the State including the judiciary. It is not necessary at this stage to delve into the details thereof and it would suffice to mention that on account of various aberrations and other factors which were not quite honourable, the need was felt to streamline, regularize and make transparent the

facet of transfer of the Government employee which in this case happen to be Police Personnel. Therefore, that aspect of the matter has now become statute regulated and that is relatable to the mandate of the Hon'ble Supreme Court in **Prakash Singh's** case. Therefore, it will have to be zealously guarded and made sure that the transfer aspect of the matter is not made light of and is made strictly adhering to the statutory principles and also to translate into reality the legislative intent which in turn as mentioned above, traces its origin to the mandate in **Prakash Singh's** case.

6. Another aspect of the matter is that these disputes are brought before a forum which generally and by and large exercises jurisdiction of judicial review of administrative action with all the well known jurisdictional constraints. However, an approach which may lead to practical refusal to exercise jurisdiction at all even when there is a statutory mandate which traces its origin to the law laid down by the Hon'ble Supreme Court, then the judicial forum must guard thereagainst and must show awareness to the need of making sure that the statutory mandate was properly observed and if it is found even on a surface view that it was not, then there would be no other-go but "to act" in so far as the judicial forum is concerned."



I need not take any different view in this matter as regards scope of judicial review in such transfer matters.

10. As regards constitution of the Police Establishment Board no. 2, this Tribunal in the aforesaid judgment has observed that:-

“Now, before I proceed further, it needs to be mentioned that in this particular matter, I have on record, a copy of the minutes of the meeting of the PEB-2, dated 24.5.2016. Very pertinently, the only non-Police Personnel viz. Shri Satbir Singh, Principal Secretary, Home (Appeal and Security) was not present in that meeting. His signature is also not there and in fact, the order dated 4.7.2016 would show that it was not clear as to whether he was informed at all about this meeting of the PEB-2. But, ultimately, it came about that he was not even given intimation about that meeting. Therefore, the meeting was attended by all the Police Personnel. Now, I have to take the law as it is and thereunder, the Chairmanship has been given to the senior-most authority.”

From this discussion, it is clear that there is a question mark on the decision taken by P.E.B-2 in this case, when the only independent member of the Board was not even invited for the meeting. The Respondents have relied on



the judgments of this Tribunal in O.A no 48/2012 and O.A no 556/2013, where it was held that casual absence of a Member would not invalidate the proceedings of the Police Establishment Board. However, if a member, who happens to be only independent member, is not even invited for the meeting, that gives a totally different complexion.

11. In para 20 of the aforesaid order, this Tribunal has held that:-

“20. It is very clear from the above extract that in so far as service condition of transfer is concerned, once it is statute regulated, then on no ground other than those codified ones could the transfer be legally effected. In fact, it would amount to malice in law if the employer did that. In fact, the Hon’ble Supreme Court has been pleased to hold that such an order, were it to be made, would be wholly illegal.”

Further, in para 23, it is held that:-

“Therefore, what is most important is to uphold the basic principle underlying the provisions of the said Act, and therefore, mere high sounding, serious looking allegations of complaint or incompetence would not be enough to sustain such an order of

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transfer unless more tangible material was placed before the judicial forum in support of the case of the Respondents.”

12. It is quite clear that all these observations are equally applicable in the present case. This judgment has considered practically all the judgments cited by the parties in the present case. The order of Police Establishment Board No. 2 dated 24.5.2016, qua the Applicant is not sustainable and has to be quashed and set aside. The Applicant is directed to be reposted to the post he was transferred from within one week from the date of this order. The Original Application is allowed accordingly with no order as to costs.

Sd/-
(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai
Date : 09.08.2016
Dictation taken by : A.K. Nair.