

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION 518 OF 2016

DISTRICT : KOLHAPUR

Shri Shrikant Sadashiv Khapale,)
Police Naik, Buckle No. 462,)
Kale Police Station, Kolhapur,)
Residing at 858/1/29, Dattoba Shinde)
Nagar, Surve Nagar, Near Mudale Kirana)
Store, Kalamba, Dist-Kolhapur 416 007)...**Applicant**

Versus

1. Director General of Police,)
Maharashtra State, Old Council Hall)
Colaba, Mumbai.)
2. Superintendent of Police,)
Kolhapur, Dist-Kolhapur.)...**Respondents**

Shri M.D Lonkar, learned advocate for the Applicant.

Ms Neelima Gohad, learned Presenting Officer for the Respondents.



CORAM : Shri Rajiv Agarwal (Vice-Chairman)

DATE : 18.08.2016

ORDER

1. Heard Shri M.D Lonkar, learned advocate for the Applicant and Ms Neelima Gohad, learned Presenting Officer for the Respondents

2. This Original Application has been filed by the Applicant challenging the order dated 26.5.2016 issued by the Respondent no. 2 transferring the Applicant from Kale Police Station to Ajara Police Station in Kolhapur District.

3. Learned Counsel for the Applicant argued that the Applicant is a Police Naik and belongs to Constabulary as defined in section 2(4A) of the Maharashtra Police Act (M.P.A). As per section 22N(1)(b), normal tenure for Police Constabulary is five years at one place of posting. The Applicant was posted at Kale Police Station by order dated 31.5.2015. He joined there on 10.6.2015. The Applicant has not completed his tenure of five years at Kale Police Station, when he was transferred by impugned order dated 26.5.2016 to Ajara Police Station. Learned Counsel for the Applicant contended that this transfer has been done at the instance of local

Shiv Sena M.L.A, who did not want the Applicant to take action against the criminals. Learned Counsel for the Applicant stated that the Respondent no. 2 issued orders that no employee who is transferred should try to meet him, otherwise disciplinary action would be taken and as a result, the Applicant could not personally agitate his grievance before the Respondent no. 2. The Applicant submitted a representation to the Special Inspector General of Police, Kolhapur Range. However, no reply was received. Learned Counsel for the Applicant argued that the impugned order is arbitrary and issued on extraneous considerations. The Applicant had not completed his normal tenure of five years at Kale Police Station and there was no material available with the Respondent no. 2 to make out a special case for his mid-term transfer. Learned Counsel for the Applicant argued that the transfer of the Applicant was not considered by a properly constituted Police Establishment Board at District level. The transfer order dated 26.5.2016 is signed by the Respondent no. 2 and two other persons, viz., Shri Bari and Shri Amar Singh Jadhav. However, later the Respondent no. 2 has produced the minutes of the Police Establishment Board meeting which is said to be held on 24.5.2016. However, it is signed by the Respondent no. 2 on 27.5.2016. It is clear that the orders of transfers were issued before the minutes of the P.E.B meetings were signed by the Respondent no. 2. Learned Counsel for the Applicant stated that the

Respondent no. 2 in his affidavit in reply dated 13.7.2016 has annexed Exhibit R-15 which has name of the Applicant at Sr. No. 12. This is signed by the Respondent no. 2 and Shri Bari. The other two members of Police Establishment Board have not signed it. Learned Presenting Officer argued that the Respondent no. 2 himself has placed on record a copy of order dated 23.5.2016, which has been signed by four members. However, Police Establishment Board meeting was attended by only three Members on 24.5.2016 and 25.5.2016. The minutes mention that those employees, against whom default reports were received have been transferred before completion of their tenure. There are many discrepancies in the documents regarding meeting of Police Establishment Board. It was not constituted properly and it did not act as per Section 22N(2) of the Maharashtra Police Act. Learned Counsel for the Applicant stated that the impugned transfer order dated 26.5.2016 qua the Applicant is totally illegal and may be quashed and set aside.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents that the Applicant has received 15 awards and 10 punishments were imposed on him. He was suspended for having collusion with anti-social elements of Matka-gambling from 19.3.2010 to 27.8.2010 and period of suspension was treated as such. There were other punishments imposed on the Applicant

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earlier. The Applicant does not have very good service record. Learned Presenting Officer stated that the order dated 26.5.2016 is issued in accordance with the provisions of Maharashtra Police Act. As per section 22N(2), the Competent Authority can pass transfer order on administrative ground before completion of tenure of a Police Personnel. As person not having good record can be transferred 'mid-tenure'. Learned Presenting Officer argued that no case is made out for interference by this Tribunal.

5. By interim order dated 15.7.2016, the Respondent no. 2 was given an opportunity to explain discrepancies in the documents produced by him regarding transfer of the Applicant. However, no affidavit was furnished by the Respondent no. 2 and the matter is being decided on the basis of material on record.

6. The Respondent no. 2 has made a number of averments to discredit the Applicants. It is not necessary to go into them. It is being ascertained in this Original Application whether the impugned order dated 26.5.2016 meets the requirements of Section 22N(2) of the Maharashtra Police Act. The Respondent no. 2 has stated in para 22 of his affidavit in reply dated 13.7.2016 that:-

“As per the provisions (Already Exh. R-2), the Establishment Board has authority to take decision

of mid-tenure transfer of any policemen who has undisciplined records. In present matter petitioner has same undisciplined records (Already mentioned in while giving reply to para 6.4) and 10 punishments. Hence, the competent authority, i.e. Establishment Board has legal right to pass an order of mid-tenure transfers.”

It is seen that the phrase ‘mid-tenure’ is nowhere defined in Maharashtra Police Act. Section 2 (6B) of the Maharashtra Police Act defines ‘Mid-term’ transfer as a transfer other than General Transfer. The Respondent no. 2 is probably referring to proviso below Section 22N(1), which reads:-

“Provided that the State Government may transfer the Police Personnel prior to the completion of his normal tenure, if.....”

Five grounds are prescribed in which a Police Personnel can be transferred before completion of his tenure by the State Government. ‘Undisciplined’ (probably the Respondent no. 2 means ‘indisciplined’) conduct is not covered under this proviso. In Section 22(N)(2) it is provided that:-

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“(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.”


From this section, it can be seen that only the Competent Authority can issue mid-term transfer orders. For the member of Constabulary, it is the Police Establishment Board (P.E.B) at District level. The Applicant's mid-term transfer by impugned order dated 26.5.2016 could be ordered by the P.E.B at District level. However, such a mid-term transfer cannot be ordered on administrative grounds. Section 22N(2) clearly provides that it can be done only on the grounds mentioned in Section 22N(1) and in addition, to those grounds, such transfer can be ordered in exceptional cases, in public interest and on account of administrative exigencies. All these three factors have to be present, if a mid-term transfer order has to be valid. The Respondent no. 2 has nowhere mentioned that there was any exceptional case to justify transfer of the Applicant before completion of his tenure. Only a default report is mentioned. That default report does indicate that there was complaint against the Applicant from some M.L.A (Exhibit R-15, page 85 of the Paper Book). It is seen that there were allegations against the Applicant from some other persons also. However, no attempt appears to have been made by the Respondent no. 2 to verify whether there was substance in these allegations. Such unverified allegations cannot

constitute an exceptional case under Section 22N(2). The impugned order qua the Applicant has been issued in total violation of the provision contained in Section 22N(2) of the Maharashtra Police Act and cannot be sustained.

7. There are various discrepancies in the minutes of the meeting of P.E.B, said to have been held on 24.5.2016 and 25.5.2016. The minutes are signed by the Respondent no. 2 on 27.5.2016, while the impugned order was issued on 26.5.2016. The minutes do not have any record to suggest that default report against the Applicant was considered by P.E.B. The meeting was attended by only three of the four Members. As per para 20 of the affidavit in reply dated 13.7.2016, the document at Exhibit R-15 is described as:-

“Copy of undisciplined records of Policemen is annexed hereto and marked as Exhibit R-15.”

It is not mentioned in the minutes that this record was considered by P.E.B in its meeting on 24.5.2016 and 25.5.2016. It is signed by only two of the members of P.E.B. All these facts do not inspire any confidence in the minutes of the P.E.B meeting. It is difficult to hold that P.E.B had applied mind before deciding to order mid-term transfer of the Applicant.



8. Having regard to the aforesaid facts and circumstances of the case, the impugned transfer order dated 26.5.2016 qua the Applicant is quashed and set aside. The Respondent no. 2 is directed to post the Applicant back to Kale Police Station within one week from the date of this order. This Original Application is allowed accordingly with no order as to costs.

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai
Date : 18.08.2016
Dictation taken by : A.K. Nair.

