

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 520 OF 2015

DISTRICT : PUNE

Shri Santosh Prabhakar Sawant)
Occ : Police Constable,)
R/at : 1035, Shukravar Peth,)
Tilak Road, Pune - 42.) **..Applicant**

Versus

1. The State of Maharashtra)
Through the Secretary,)
Home Department, Mantralaya,)
Mumbai 400 032.)
2. The Commissioner of Police,)
Pune.)
3. The Deputy Commissioner)
[H.Q-1]) Police Head Quarter,)
Pune City,)
Pune.)
4. The Deputy Commissioner,)
Zone-2, Lashkar Police Station,)
Pune City, Pune.) **...Respondents**

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Shri K.R Jagdale, learned advocate for the Applicant.

Shri N.K. Rajpurohit, learned Chief Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

DATE : 04.01.2016

ORDER

1. Heard Shri K.R Jagdale, learned advocate for the Applicant and Shri N.K. Rajpurohit, learned Chief Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant challenging the order dated 22.4.2015 attaching the Applicant to Police Headquarters, Pune till further orders. The Applicant claims that this is, in effect, transfer order, transferring him from Sinhagad Road Police Station before he had completed his tenure there.

3. Learned Counsel for the Applicant argued that the Applicant was posted to Sinhagad Police Station, Pune by order dated 31.5.2014. As per section 22-N(1)(b) of the Maharashtra Police Act (M.P.A), normal tenure of a Police Constable is five years at one place of posting. However, the Respondent no. 3 by order dated 22.4.2015 has transferred the Applicant before he had completed

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even one year of his normal tenure. Learned Counsel for the Applicant argued that the Respondent no. 3 has no authority under the M.P.A to transfer him. Under Section 22-N, his mid-term transfer can be ordered only by the Police Establishment Board at Commissionerate level who is the Competent Authority. However, the transfer of the Applicant has been ordered by the Deputy Commissioner of Police [H.Q], who does not have powers, to transfer a Police Constable even during general transfers. Learned Counsel for the Applicant stated that the impugned order dated 22.4.2015 has not used the word transfer but has used the term attachment. However, this Tribunal has held in many cases that attachment without assigning any reason and without specifying the period of such attachment amounts to a transfer. Learned Counsel for the Applicant relied on the judgment of this Tribunal dated 20.11.2015 in O.A nos. 562, 677, 744 and 869/2015.

4. Learned Chief Presenting Officer (C.P.O) argued on behalf of the Respondents that the Applicant has not been transferred at all. He has only been attached to Police Headquarters in view of serious complaints pending against him and the case registered against him under the Prevention of Corruption Act for owning assets disproportionate to the known source of income. Learned C.P.O argued that the Applicant has

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not been transferred and the provisions of the Maharashtra Police Act have not been attracted.

5. The Applicant has been asked to report for duty at Police Headquarters by the impugned order dated 22.4.2015. The Respondents claim that it is not a transfer order. From the tone and tenor of the impugned order, it is quite clear that the Applicant is not working in Sinhagad Road Police Station, where he was posted by order dated 31.5.2014. As per section 22-N(1)(b) of M.P.A, he has a normal tenure of 5 years at that Police Station. If he is to be transferred before completion of his tenure, that can be done only by the order of the Police Establishment Board at Commissionerate level. It is admitted by the Respondents that the impugned order was not approved by the Police Establishment Board. The claim of the Respondents that attachment does not amount to 'transfer' has been repeatedly rejected by this Tribunal. Attachment to a post without assigning any specific task and specific period is nothing but transfer. The impugned order has, in fact, transferred the Applicant before completion of his tenure in the garb of attachment and such order cannot be sustained unless it complies with the requirement of M.P.A. Admittedly, the approval of the Police Establishment Board was not obtained. Even if there were reasons to order mid-term transfer of the Applicant, such approval of the Police Establishment Board is mandatory under M.P.A.

6. Having regard to the aforesaid facts and circumstances of the case, the impugned order dated 22.4.2015 is quashed and set aside. The Respondents will permit the Applicant to discharge his duties at Sinhagad Road Police Station forthwith. This Original Application is allowed accordingly with no order as to costs.

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai

Date : 04.01.2016

Dictation taken by : A.K. Nair.