

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.567 OF 2020

DISTRICT : PUNE

Shri Shridhar Pandurang Jadhav.)
Age : 57 Years, Working as Assistant)
Commissioner of Police, Wakad Division,)
Pimpri-Chanchwad and residing at 201,)
Dattachaya, 16, Tejas Housing Society,)
Kothrud, Pune – 411 038.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Addl. Chief Secretary,)
Home Department, Mantralaya,)
Mumbai – 400 032.)
2. Director General of Police, M.S,)
Mumbai, Maharashtra Police)
Headquarter, Shahid Bhagat Singh)
Marg, Colaba, Mumbai – 400 001.)
3. Commissioner of Police.)
Pimpri-Chinchwad, Peremlok Park,)
Chinchwad, Pune – 411 033.)
4. Shri Ganesh Biradar.)
Assistant Commissioner of Police,)
Wakad Division, Pimpri-Chinchwad,)
Pune.)...**Respondents**

Mrs. Punam Mahajan, Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents 1 to 3.

Mr. V.V. Ugale, Advocate for Respondent No.4.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 07.01.2021

JUDGMENT

1. The Applicant has challenged the transfer order dated 9th October, 2020 in respect of his transfer as Assistant Commissioner of Police, Wakad Division, Pimpri-Chinchwad to Sub Divisional Police Officer, Akkalkua, District Nandurbar and transfer of Respondent No.4 in his place from Nagpur to Wakad invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to the O.A. are as under :-

The Applicant is serving in the cadre of Assistant Commissioner of Police. He was promoted in the cadre of ACP by order of Government dated 9th July, 2018. Earlier, he was in the cadre of Police Inspector and was waiting for posting on promotion. Therefore, by order dated 09.07.2018, he was transferred on the establishment of Police Commissionerate, Pimpri-Chinchwad. Accordingly, he joined at Pimpri-Chinchwad on 03.08.2018 and by order dated 14.08.2018, he was given posting as ACP, Wakad Division by Police Commissioner, Pimpri-Chinchwad. Again by order dated 27th February, 2019, he was transferred to Administration i.e. Head Quarter, Pimpri-Chinchwad Commissionerate. Later, again by order dated 20th June, 2019, he was transferred to Crime Branch. Then again, by order dated 30th June, 2020, he was transferred from Crime Branch to Wakad Division as ACP.

3. The Applicant claims to have normal tenure of two years as per the provisions of Maharashtra Police Act and contends that he was entitled for two years' full tenure at his last posting dated 30th June, 2020 as ACP, Wakad. However, abruptly, by order dated 09.10.2020, he was transferred as SDPO, Akkalkua, District Nandurbar and in his place, the

Respondent No.4 who was ACP at Nagpur was posted. The Applicant contends that the transfer order dated 09.10.2020 is mid-term and mid-tenure and he has been shifted only to accommodate Respondent No.4.

4. Smt. Punam Mahajan, learned Advocate for the Applicant sought to assail the impugned transfer order of the Applicant as well as Respondent No.4 on the following grounds :-

(i) Since the Applicant has not completed normal tenure of two years as guaranteed under the provisions of Maharashtra Police Act, the transfer order dated 09.10.2020 is mid-term and mid-tenure in the eye of law, since the general transfers were required to be effect only in the month of April or May as provided under Section 2(6A) of Maharashtra Police Act.

(ii) No case is made out to attract Section 22N(2) of Maharashtra Police Act which empowers Contempt Authority to transfer Police Personnel mid-term in public interest and on account of administrative exigency.

(iii) G.R. dated 07.08.2020 relied by the Respondents to effect transfer of the Applicant is totally misinterpreted and on the face of it, the impugned transfer order is unsustainable in law.

5. Per contra, Smt. K.S. Gaikwad, learned Presenting Officer and Shri V.V. Ugale, learned Advocate for Respondent No.4 sought to justify the impugned transfer order basically relying on G.R. dated 07.07.2020. The learned P.O. submits that due to Covid-19 pandemic situation, general transfers could not be effected in the month of April or May, and therefore, by G.R. dated 07.07.2020, the decision was taken to effect the transfer upto 31st July, 2020 which deadline later extended upto 15th October, 2020 by G.R. dated 30th September, 2020. She, therefore, canvassed that it was a case of general transfer since the Applicant had completed two years' tenure on the date of passing of transfer order, and

therefore, in the light of G.R. dated 07.07.2020, the impugned transfer order cannot be faulted with.

6. It is well settled that transfer is an incident of service and are made in exercise of administrative powers to meet the exigencies of service. However, now the transfers of Police Personnel are governed and regulated by the provisions of Maharashtra Police Act. Unless the transfers are in contravention of law or made with ulterior motives or in patent arbitrary exercise of powers, the Court would decline to interfere in such matter. Suffice to say, if the transfer is found in contravention of mandatory provisions of Maharashtra Police Act, then it needs to be struck down.

7. Indisputably, the Applicant being in the cadre of ACP was entitled for normal tenure of two years as provided under Section 22N(1)(a) of Maharashtra Police Act, which *inter-alia* provides for fix tenure of Police Personnel, which has been brought into statute in view of decision of Hon'ble Supreme Court in ***Prakash Singh and others Vs. Union of India and others (2006) 8 SCC 1***. Suffice to say, the law provides for normal tenure of Police Personnel of various cadres. However, Section 22 N(2) empowers the competent authority to transfer Police Personnel mid-term in public interest and on account of administrative exigencies in exceptional cases.

8. General Transfers and Mid-Term Transfers are defined in Section 2(6-A) and (6-B) of Maharashtra Police Act, which are as follows :-

“2(6-A) “General Transfer” means posting of a Police Personnel in the Police Force from one post, office or Department to another post, office or Department in the month of April and May of every year [after completion of normal tenure as mentioned in sub-section (1) of section 22N].

(6-B) “Mid-term Transfer” means transfer of a Police Personnel in the Police Force other than the General Transfer].”

9. In so far as the cadre of ACP is concerned, the competent authority for transfer of the Applicant is Home Minister on the recommendation of Police Establishment Board No.1 as constituted and established under Section 22(C) of Maharashtra Police Act which is headed by Additional Chief Secretary, Home.

10. Thus, as per the provisions of Maharashtra Police Act, the general transfers are required to be effected once in a year i.e. in April or May. Whereas, in 2019, due to un-precedential situation of Covid-19, the general transfers could not effect in any of the Department of Government of Maharashtra. The Government of Maharashtra through Finance Department issued G.R. on 4th May, 2020 not to effect any transfer in view of Covid-19 pandemic situation, so as to maintain consistency in the measures undertaken by the Government to curb the disease.

11. Later, the Government through GAD issued G.R. dated 07.07.2020 which is the bone of contention and relied by both the parties. The relevant portion of G.R. at Page No.55 of P.B. is as under :-

“शासन निर्णय -

कोविड-१९ या संसर्गजन्य रोगाच्या पार्श्वभूमीवर सन २०२०-२१ या आर्थिक वर्षात करावयाच्या बदल्यांसंदर्भात पुढीलप्रमाणे कार्यवाही करण्यात यावी असे या शासन निर्णयान्वये सूचित करण्यात येत आहेत.

महाराष्ट्र शासकीय कर्मचा-यांच्या बदल्यांचे विनियमन आणि शासकीय कर्तव्ये पार पाडतांना होणा-या विलंबास प्रतिबंध अधिनियम, २००५ मधील तरतूदीनुसार राज्य शासकीय अधिकारी व कर्मचारी यांच्या सर्वसाधारण बदल्या प्रत्येक वर्षी एप्रिल व मे या महिन्यात करण्यात येतात. मात्र, प्रस्तावनेत नमूद केलेल्या पार्श्वभूमीवर चालू वित्तीय वर्षात दि. ३१ मे २०२० पर्यंत करावयाच्या सर्वसाधारण बदल्या या दि.३१ जुलै, २०२० पर्यंत त्या त्या संवर्गातील एकूण कार्यरत पदांच्या १५ टक्के एवढ्या मर्यादित करण्यात याव्यात.”

12. Admittedly, the deadline of such transfer to be effected upto 31.07.2020 were later extended upto 15th October, 2020 by G.R. dated 30.09.2020 (Page No.57 of P.B.).

13. The minutes of PEB *inter-alia* shows that 24 Police Personnel were transferred under the caption ‘administrative ground’. It is only in the opening remark, it is stated that the transfers of Police Personnel (25)

were being effected on 'administrative ground'. What is important to note that except vague stating that transfers are effected on administrative ground, no other reasons or grounds even for namesake are forthcoming as to what was the administrative exigency. Indeed, this aspect of making out a case of administrative exigency is not relevant here as the fate of the matter depends upon the interpretation of G.R. dated 07.07.2020 since admittedly the Respondents have treated the transfer of the Applicant as 'general transfer'. The learned P.O. repeatedly urged that it is a case of general transfer and they are not invoking Section 22N(2) of Maharashtra Police Act. As such, the controversy is narrowed down and one need to find out whether the Applicant was due for transfer in the eye of law and he was rightly transferred by order dated 9th October, 2020 on the basis of G.R. dated 07.07.2020.

14. The issue of internal posting of the Applicant since his initial posting in Pimpri-Chinchwad was also raised during the course of submission. He joined in Pimpri-Chinchwad Police Commissionerate on 03.08.2018, and thereafter, he was subjected to frequent shifting within Commissionerate area. Lastly, he was posted as ACP, Wakad by order dated 30th June, 2020. According to learned Advocate for the Applicant, her client was entitled for two years' tenure at Wakad Division w.e.f.30th June, 2020 but being transferred mid-tenure by order dated 09.10.2020, the transfer is bad in law.

15. The learned Advocate for the Applicant referred to the decision rendered by Hon'ble Chairperson of this Tribunal in **O.A.664/2020 (Chandrakant J. Jadhav Vs. Commissioner of Police, Thane) decided on 24.12.2020** wherein the interpretation of tenure/post vis-à-vis normal tenure at one posting within Commissionerate area was involved. The perusal of Judgment reveals that Hon'ble Chairperson has referred to 39 decisions and in Para Nos.40 and 41 concluded as follows :-

"40. Thus considering the ratio laid down in the various cases as discussed above, as placed before me, it appears that no law is laid down

conclusively on Section 2(6A) of the said Act by the Bombay High Court and this Tribunal has taken a view consistently that any shifting from post, posting, office, department to other post, posting office, department under same Commissionerate amounts to transfer under Section 2(6A) of the said Act. Moreover, the Respondents-State did not challenge the orders of this Tribunal cancelling the transfers of the Police Officers by applying definition under Section 2(6A) of the Maharashtra Police Act. Thus it appears that the Respondents-Government has also accepted the view expressed in many matters on the point of Section 2(6A) of the Maharashtra Police Act. I take the same view and hold that the shifting of the applicant from Shil-daighar Police Station to Special Branch amounts to transfer.

41. The word ‘administrative exigencies’ or ‘public interest’ cannot be used routinely but considering the facts and circumstances involved in the case the real reason to accommodate somebody on his or her request should not be camouflaged in the name of administrative exigencies or public interest. The authority can transfer the Police Personnel to any post or can be given any posting only after the tenure is over and can transfer mid-tenure or mid-term after making out a genuine case of public interest or administrative exigencies. However, as per the G.R., the transfer orders could be issued till 31.10.2020, but in the present case the applicant is transferred on 05.11.2020. Hence, it is beyond the Government’s own policy.”

16. Indeed, the learned Advocate for the Applicant submits that even if the Applicant’s tenure since inception from 03.08.2018 is concerned, in that event also (ignoring internal posting), the Applicant was not due for transfer in general transfers of 2020, which was stalled by the Government in view of Covid-19 pandemic situation, and therefore, the transfer order is bad in law.

17. Whereas, the learned P.O. sought to contend that, as the Applicant had completed two years’ tenure on the date of issuance of order, it will have to be treated as general transfer. She sought to interpret G.R. dated 07.07.2020 in the manner canvassed by her. An attempt was made to contend that in terms of G.R. dated 07.07.2020, the employee could be transferred on any date, if he had completed normal tenure guaranteed under the law on the date of issuance of order. This interpretation is totally fallacious and contrary to the mandatory provisions of law. If theory propounded by the learned P.O. is accepted, there would be transfer orders in every month rather on every day on

which concerned employee completes normal tenure. This is certainly never ever intended by Legislator or Government while issuing G.R. dated 07.07.2020. Such situation will be in defiance of law.

18. Indeed, a specific provision contained in Maharashtra Police Act which guaranteed tenure of Police Personnel and defined general transfers as well as mid-term transfers could not be tampered upon by issuance of G.R. otherwise it amounts to substitute the law which is not at all countenanced in law. Needless to mention, it is the law which would prevail and not Government Resolutions particularly when it is in contravention of express provisions of law. The G.R. is in nature of executive instructions. It is well settled that executive instructions may supplement statutory provisions, but not supplant the same.

19. Apart, the very foundation of the transfer of the Applicant that since he had completed normal tenure of two years on the date of passing of transfer order is totally misconstrued and contrary to the G.R. dated 07.07.2020 itself. The relevant portion of G.R. is already reproduced above which specifically states that because of Covid-19 pandemic situation, the general transfers could not be effected which were required to be effected in April or May, and therefore, the Government had taken decision to effect general transfers of 15% employees amongst Government servants, who were due for transfer in general transfer of April or May. The specific contents of G.R. are दि. ३१ मे २०२० पर्यंत करावयाच्या सर्वसाधारण बदल्या या दि. ३१ जुलै, २०२० पर्यंत त्या त्या संवर्गातील एकूण कार्यरत पदांच्या १५ टक्के एवढ्या मर्यादित करण्यात याव्यात.

20. Thus, it leaves absolutely no doubt that 15% transfers were to be effected out of employees who were due for general transfer in April or May. As such, what was extended was the issuance of transfer order and not the tenure of Government servant. In other words, the plain reading of G.R. clearly spells that the transfers were to be effected upto 31.07.2020/15.10.2020 who were due for transfer in April or May since

their transfer orders could not be effected or issued in the month of April or May due to Covid-19 pandemic situation.

21. Unfortunately, the Respondents interpreted G.R. dated 07.07.2020 to mean that they were empowered to transfer the Applicant on 9th October, 2020 since he had completed two years' tenure on the date of issuance of transfer order i.e. on 09.10.2020. True, he had joined in Pimpri-Chinchwad on 03.08.2018 and had completed two years on the date of issuance of transfer order. However, he had admittedly not completed two years tenure in April or May of 2020, and therefore, question of considering his further period onward May, 2020 so as to transfer him does not arise. At the cost of repetition, I would like to point out that in terms of G.R. dated 07.07.2020 itself, what was extended was issuance of formal order of transfer of the employees, who have completed normal tenure and due for general transfer in April or May, 2020.

22. Apart, even if one consider a case of transfer on administrative ground invoking Section 22N(2) of Maharashtra Police Act, in that event also, no such exceptional case is made out as mandated in Section 22N(2) of Maharashtra Police Act which *inter-alia* provides for mid-term transfer by PEB in public interest and on account of administrative exigencies. To substantiate such mid-term transfer, mere caption that transfer is on account of administrative exigency is not at all enough. The law requires recording of reasons though in brief to show what was the administrative exigency or public interest. Admittedly, the Respondents have not invoked Section 22N(2) of Maharashtra Police Act in the present case.

23. All that, the Respondents assumed that in terms of G.R. dated 07.07.2020, the Applicant was transferable since he had completed two years on the date of issuance of transfer order, which is totally fallacious and erroneous. By G.R. dated 07.07.2020, relaxation was granted for

issuance of transfer orders to all those employees who have completed normal tenure and due for general transfer in April or May. Since admittedly, the Applicant had not completed two years' tenure even counting his tenure since inception from 03.08.2018, he was not due for general transfer of April or May of 2020. This being the position, there is no alternative except to hold that the impugned transfer order is totally unsustainable in law. There are reasons to hold that the Applicant was transferred only to accommodate Respondent No.4. Material to note that Respondent No.4 was earlier transferred from Ichankaranji, District Kolhapur to Nagpur by order dated 30th September, 2020. However, he did not join at Nagpur and challenged the transfer order by filing O.A.No.525/2020, which he withdrew on 06.10.2020. Within three days, he got transferred order dated 09.10.2020 whereby he was posted in place of Applicant. This clearly indicates that the Applicant was shifted though not due for transfer only to favour Respondent No.4.

24. The totality of aforesaid discussion leads me to conclude that the impugned transfer order dated 09.10.2020 as well as posting of Respondent No.4 by order dated 14.10.2020 at Wakad Division are in defiance of provisions of law and deserves to be quashed. Hence, I proceed to pass the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned order dated 09.10.2020 qua the Applicant and Respondent No.4 are quashed.
- (C) Consequently, the impugned order dated 14.10.2020 about posting of Respondent No.4 in place of Applicant is also quashed.
- (D) The Respondents are directed to reinstate the Applicant as ACP, Wakad within a week from today.

- (E) While the Judgment is dictated and pronounced in the open Court, the learned Advocate for Respondent No.4 seeks stay of at least two weeks for the implementation of order to which the learned Advocate for the Applicant objected. The learned Counsel for the Applicant submits that hardly ten months' service is left for retirement of the Applicant and no case is made out to stay the order. In view of findings recorded above, that *ex-facie* transfer order is unsustainable in law, I am not inclined to stay the order.
- (F) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 07.01.2021

Dictation taken by :

S.K. Wamanse.

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