

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.568 OF 2020

DISTRICT : Pune

Shri Sunil Vishnu Pawar,)
Age 55 years, Occ.Asst. Commissioner of)
Police.)
R/at 17/8/27, Shiveneri Park, High Street,)
Balewadi, Pune 411 045.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the 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, Pune City,)
Sadhu Vaswani Road, Camp,)
Pune 411 001.)
4. Milind K. Patil, Asst.Commissioner of)
Police, Special Branch No.1 (Admn.))
O/of Commissioner of Police, Pune City,)
Sadhu Vaswani Road, Camp,)
Pune 411 001.)....**Respondents**

Smt. Punam Mahajan, learned Counsel for the Applicant

Smt. Kranti Gaikwad, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 13.07.2021

JUDGMENT

1. The Applicant has challenged the order dated 09.10.2020 issued by the Respondent No.1 – Government of Maharashtra thereby cancelling the Applicant's transfer order dated 30.09.2020 invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985

2. Shortly stated facts giving rise to this application are as under:-

The Applicant is serving in the cadre of Deputy Superintendent of Police. He was working as Deputy Superintendent of Police, Caste Scrutiny Certificate Verification Committee, Buldhana. The Respondent No.1 by order dated 30.09.2020 was pleased to transfer the Applicant from Buldhana to Pune as Assistant Police Commissioner, Pune City. Accordingly, the Applicant joined at Pune on 05.10.2020. However, to his surprise the Respondent No.1 by another order dated 09.10.2020 cancelled his posting and transfer at Pune which is impugned in the present Original Application. Thus, the small issued posed for consideration is whether the order dated 09.10.2020 cancelling the Applicant's posting and transfer order dated 30.09.2020 at Pune is legal and valid.

3. Since, the Applicant was working in the cadre of Deputy Superintendent of Police, he was entitled to two years tenure in terms of the provisions of Maharashtra Police Act. Indisputably, while he was working at Buldhana, by order dated 30.09.2020 he was transferred as Assistant Commissioner, Pune City and accordingly, he joined at Pune. However, within ten days, the Respondent No.1 cancelled the order dated 30.09.2020 by passing another order dated 09.10.2020 simply stating that the transfer of the Applicant from Buldhana to Pune is cancelled which is at page Nos.29 to 30 of PB. All that in Para No.2 of order, it is stated that the Applicant's transfer

order dated 30.09.2020 from Buldhana to Pune is hereby cancelled without mentioning anything further. True, the order seems to have been passed in exercise of Section 22N of Maharashtra Police Act. However, no ground or reason is mentioned in the impugned order dated 09.10.2020.

4. Now, turning to the Affidavit-in-Reply, the Respondent No.1-Government of Maharashtra all that stated in Para No.11 that the order dated 30.09.2020 as well as order dated 09.10.2020 are passed by Police Establishment Board (PEB)-1 and the same are approved by the Hon'ble Home Minister in exercise of his powers as Competent Authority under Section 22N of Maharashtra Police Act. Para No.11 needs to be reproduced which is as follows:-

“11. With reference to Paragraph NO.6(11), I say and submit that the Applicant was transferred from the post of Dy.S.P. Caste Scrutiny Committee, Buldhana to the post of A.C.P. in Pune Police Commissionerate by Government Order, Home Department, No.SPS-1720/C.R.97/Pol-1A dated 9.10.2020, both the said Government Orders were issued in pursuance of the recommendation of Police Establishment Board No.1 and approval thereto by the Hon'ble Home Minister in exercise of his powers as Competent Authority, under Section 22N of the Maharashtra Police Act (Bom.Act No.22 of 1951). I say and submit that the Applicant's transfer has been done on administrative grounds.”

5. Thus, in reply attempt has been made to show that impugned order has been passed on administrative ground. However, here again what is administrative ground is not at all clarified in the reply. As stated above, in terms of the provisions of Maharashtra Police Act, the Applicant was entitled for two years tenure at his new posting at Pune. However, within ten days, he was displaced stating that his order of transfer from Buldhana to Pune is cancelled meaning thereby he was to go back to Buldhana. Once the Applicant has been transferred by the Competent Authority to Pune and he joined there, he was entitled for two years tenure in terms of the provisions of Maharashtra Police Act. If a police personnel is required to be

transferred mid-tenure, in that event, there has to be the compliance of Section 22N(2) of Maharashtra Police Act which inter-alia provides that in exceptional case, in public interest and on account of administrative exigencies, the Competent Authority can do mid-term transfer of any police personnel.

6. Now, turning to the facts of the present case on previous hearing i.e. 09.07.2021, learned P.O. was directed to produce the file to know the reasons for grounds for displacing the Applicant within ten days, and further to know that whether it is in consonance with Section 22N(2) of Maharashtra Police Act.

7. Today, however learned P.O. is unable to produce the record and sought time for production of the same. In my considered opinion, there is no need to wait for the record since the record has already examined by the Tribunal while granting interim relief on 20.10.2020 and most importantly for the reason that the learned P.O. fairly concedes that in file noting, no specific reason or ground is mentioned for such mid-tenure transfer. All that she stated that it has been recommended by PEB-1 and the same has been approved by the Hon'ble Home Minister. As such, there is no denying that the file noting and record is also silent about the ground and reason for mid-tenure transfer of the Applicant. Mere recommendation of PEB and the approval of the Hon'ble Minister would not render the transfer order legal and valid unless it is in consonance with Section 22N(2) of Maharashtra Police Act. In other words, there has to be a special case or some administrative exigency or public interest to transfer the police personnel mid-tenure. Mere words that the transfer is on administrative ground is not enough. There has to be the reasons showing reasons for administrative transfer which is totally missing in the present case. If transfers are allowed only by mentioning "administrative ground" without assigning any reasons it would defeat the mandatory provisions of law.

8. Now, turning to the observation made by this Tribunal by order dated 20.10.2020, in Para No.4, 5 and 6 the Tribunal observed as under:-

“ 4. Learned counsel for the applicant submits that the applicant was transferred to Buldhana on 20.8.2019. However, the applicant has requested for his transfer to Pune on the ground that his wife is suffering from Cancer and therefore, he is required to stay at Pune along with his wife. She submits that on perusal of the transfer file and the noting of the Police Establishment Board, no special reason for transfer of the applicant is found. She submits that the applicant is transferred mid-tenure only to accommodate Respondent no. 4 and other Police Officers.

5. Learned P.O while opposing submission of learned counsel for the applicant for grant of interim relief, relied on the record of the transfer file of the applicant. She submits that in para 8 of file noting, it is mentioned that in PIL no. 154/2016, which was decided on 28.3.2017 by Bombay High Court, Aurangabad Bench, specific directions of filling all the vacant posts of the Members of the Caste Scrutiny Committee in State of Maharashtra were given and the applicant is transferred pursuant to the said order in the PIL.

6. On perusal of the said noting it is found that this was not the specific reason for cancellation of his transfer order dated 9.10.2020. There is no specific direction given by the Bombay High Court, Aurangabad Bench, qua this applicant. It was a PIL. Surprisingly, though the Hon. Bombay High Court, Aurangabad Bench, has given time span of six months from the date of judgment for filling up such posts, Home Department, remembered this order after long three years to transfer the applicant. The reason given is not sustainable. Similarly the medical ground of his wife is also another consideration for his transfer from Buldhana to Pune.”

9. Thus, interim relief was granted having satisfied that no reason much less satisfactory were forthcoming for mid-tenure transfer of the Applicant. Even on merit also there is no change in the situation. This being the position, the interim relief granted by the Tribunal needs to be made absolute.

10. At this juncture, learned P.O. interfered and submits that the concerned official from the Home Department had come along with the record and requested to produce the same for perusal of the Tribunal. She was allowed to produce the record.

11. I have gone through the Minutes of PEB-1 dated 09.10.2020. Perusal of Minutes reveals that PEB headed by the Additional Chief Secretary, Home Dept. had recommended for some changes/transfer of 24 police personnel and the name of the Applicant is at Sr. No.23. All that in Minutes, it is stated as under:-

२३	श्री. सुनिल विष्णु पवार	सहायक पोलीस आयुक्त, पुणे शहर	बदली आदेश रद्द करणे.
----	-------------------------	---------------------------------	-------------------------

12. Thus, except recommending for cancelling of posting of the Applicant at Pune not a single word is forthcoming as to what prompted the PEB-1 to cancel the positing and transfer of the Applicant at Pune. It is really surprising that the PEB-1 headed by the Additional Chief Secretary, Home mechanically cancelled the posting and transfer of the Applicant at Pune without assigning any reason. It is thus, arbitrary and in blatant violation of the provisions of Maharashtra Police Act. Even in file noting, in approval by the Home Minister, no reason for such mid-tenure transfer is forthcoming. The Minutes of PEB-1 were simply approved by the Hon'ble Minister without bothering to see whether it is in accordance to law.

13. Suffice to say, the impugned order is totally bad in law and liable to be quashed.

14. The totality of the aforesaid discussion leads me to conclude that the order of cancellation of the positing and transfer of the Applicant at Pune by impugned order dated 09.10.2020 is totally unsustainable in law and O.A. deserves to be allowed. Hence, the following order:-

ORDER

- (A) Original Application is allowed.
- (B) Impugned order dated 09.10.2020 cancelling the transfer And posting of the Applicant vide order dated 30.09.2020 at Pune is hereby quashed and set aside.
- (C) Interim relief granted by Tribunal is made absolute.
- (D) No order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Place : Mumbai
Date : 13.07.2021
Dictation taken by : VSM
D:\E drive\VSO\2021\Judgment 2021\July 21\O.A.568 of 2020 Transfer.doc