

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 609 OF 2015

DISTRICT : PUNE

Shri Rajendra Mahadeo Todkar,)
Flat No.502, B-Wing, Panchavati Apt)
Chavannagar, Dhankawadi, Pune.)...**Applicant**

Versus

1. The State of Maharashtra)
Through the Addl. Chief Secretary,)
Home Department, Mantralya,)
Mumbai 400 032.)
2. The Commissioner of Police,)
Pune City.)
3. Shri Sunil Dattraya Patil,)
Senior Police Inspector,)
Bibvewadi Police Station,)
Pune City.)...**Respondents**



Smt Punam Mahajan, learned advocate for the Applicant.

Shri K.B. Bhise, learned Presenting Officer for the Respondents no 1 & 2.

Shri A.V Bandiwadekar, learned advocate for Respondent no. 3.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

DATE : 10.03.2016


ORDER

1. Heard Smt Punam Mahajan, learned advocate for the Applicant, Shri K.B. Bhise, learned Presenting Officer for the Respondents no 1 & 2 and Shri A.V Bandiwadekar, learned advocate for Respondent no. 3.

2. This Original Application has been filed by the Applicant challenging the transfer order by order dated 23.7.2015 to Traffic Branch, Pune from Bibvewadi Police Station, Pune. The Applicant has also challenged the transfer of the Respondent no. 3 to Bibvewadi Police Station from Crime Branch, Pune by order dated 21.7.2015.

3. Learned Counsel for the Applicant argued that the Applicant was posted to Bibvewadi Police Station by order dated 24.2.2014. He has not completed his tenure


of two years, when he was transferred by order dated 23.7.2015 to the Crime Branch. Learned Counsel for the Applicant contended that a Police Officer of the rank of Police Inspector (P.I) is entitled to a tenure of two years in a Police Station as per Section 22N(1) of the Maharashtra Police Act. However, he has been transferred before he has completed his term. Learned Counsel for the Applicant stated that the Applicant's transfer is a 'mid-term' transfer as defined in Section 2(6B) of the said Act. A 'mid term' transfer can be ordered by the competent authority on the ground mentioned in section 22N(1) and in exceptional cases in public interest and on account of administrative exigencies under section 22N(2). The Competent Authority for transfer up to Police Inspector level in a Police Commissionerate is Police Establishment Board at Commissionerate level. The powers of this Board for 'mid term' transfer are limited and a Police personnel of Police Inspector level can be transferred only on the grounds mentioned in Section 22N(2). However, in the minutes of the meeting of the Establishment Board dated 21.7.2015, it was decided to post the Respondent no. 3 to Bibvewadi Police Station, on the ground to fill the vacancies caused due to transfers and to transfer those who have completed their tenures. Decision to transfer the Applicant was done for administrative reasons by order dated 23.7.2015. This was decided in the meeting of the Establishment Board on 23.7.2015. Learned Counsel for the Applicant contended that his



'mid term' transfer was simply on administrative ground, which is in complete violation of Section 22N(2) of the Maharashtra Police Act.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondent nos 1 & 2 that the Respondent no. 3 was posted to Bibvewadi by order dated 21.7.2015. This was done with the approval of the Police Establishment Board. The Applicant was transferred as a default report was sent to the Director General of Police, Maharashtra State, by the Special Inspector General of Police, State C.I.D, Pune against him on 23rd March, 2015. By order dated 11.8.2015, explanation of the Applicant was called in this regard. Earlier also a show cause notice was issued to the Applicant on 14.1.2014. Learned Presenting Officer argued that the Applicant was transferred on the basis of the default report. He further argued that the transfer is within the same city, it will not be a transfer, as per the decision of Hon'ble Bombay High Court in Writ Petition no 3301 of 2010 (Ramesh P. Shivdas Vs. State of Maharashtra & others).

5. Learned Advocate Shri A.V Bandiwadekar on behalf of Respondent no. 3 argued that the Applicant was transferred as there were strong circumstances for his transfer. This Tribunal in O.A no 455/2015 has held transfer of the Applicant therein to be valid. Learned Counsel for the Respondent no. 3 stated that the



Applicant was transferred by order dated 4.8.2014 from Bibvewadi Police Station to Traffic Branch during the General Elections. It was done to circumvent the order of Election Commission of India. This Tribunal has held so in O.A no 739 of 2014 by order dated 14.8.2014. The Applicant was, therefore, not entitled to be posted back to Bibvewadi Police Station. Learned Counsel for the Applicant stated that Bibvewadi was earlier part of the Sahakar Nagar Police Station. The Applicant was posted earlier at Sahakar Nagar Police Station, which was bifurcated into Sahakar Nagar and Bibvewadi Police Stations. If the Applicant's tenure at Sahakar Nagar Police Station is counted, he had completed his tenure. Learned Counsel for the Respondent no. 3 stated that the Director General of Police had directed all Commissioners/Superintendents in the State by letter dated 13.7.2015 to fill all vacant posts of Traffic Branch. The Applicant was accordingly transferred to Traffic Branch. By letter dated 10.7.2015, D.G.P had informed the Respondent no. 2 to take disciplinary action against the Applicant in view of the default report received from the Special I.G.P, C.I.D, Pune dated 23.3.2015. Learned Counsel for the Respondent no. 3 argued that a preliminary enquiry was ordered against the Applicant by order dated 11.8.2015 and a D.E is contemplated against him. Service record of the Applicant is not good. He has completed more than 4 years in Police Commissionerate. Learned Counsel for the Respondent no. 3 argued that



the facts in the present case are similar to the facts in O.A no 455/2015 and therefore, the Applicant's transfer may be held to be valid. Learned Counsel for the Respondent no. 3 argued that the judgment of this Tribunal in O.A no 455/2015 is in conflict with the judgment in O.A nos 694 of 2014 and 700 of 2014. The matter may therefore be referred to a Larger Bench.

6. Section 22N(2) of the Maharashtra Police Act reads as below:

“(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.”

A 'mid-term' transfer is a transfer which is not a general transfer as per section 2 (6B) of the Maharashtra Police Act. A general transfer means posting of a Police Personnel 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. Normal tenure of a Police Officer of the rank of Police Station is two years at a Police Station or Branch. However, in Special or Crime Branch in a Commissionerate, tenure shall be of three years. It is not denied by the

Respondents no 1 & 2 that the Applicant was posted at Bibvewadi Police Station on 24.2.2014. The Applicant has been transferred from Bibvewadi Police Station by order dated 23.7.2015. This order is not passed in the month of April or May. On this ground only, it is a mid term transfer. The Applicant had not completed his tenure of two years at Bibvewadi Police Station. The Respondent nos 1 & 2 have not taken the plea that the Applicant's earlier tenure at Sahakar Nagar Police Station should be counted, as Bibvewadi Police Station was created after bifurcation of Sahakar Nagar Police Station. The Respondent no. 3 has raised this issue in para 5A of his affidavit in reply dated 8.9.2015. However, in absence of this plea being taken by the Competent Authority, it has to be ignored. Moreover, even if, the Applicant had completed his tenure, still his transfer order was 'mid-term' as defined in section 2(6B) of the Maharashtra Police Act and he could not have been transferred without following the provisions of Section 22N(2) of the Maharashtra Police Act. The Respondent no. 3 has also raised another issue that during General Elections, the Applicant was transferred by order dated 4.8.2014 to Traffic Branch and after the State Assembly Elections were over he was posted back to Bibvewadi Police Station on 20.10.2014. This is mentioned in para 6.3 of the Original Application. The Respondent no. 2 has admitted the same in his affidavit in reply dated 4.9.2015. The Respondent no. 3 has stated that in O.A nos 739, 740

and 741 of 2014, by order dated 14.8.2014, this Tribunal has held that the directions of Election Commission of India should not be circumvented by such temporary transfers to exempt^{-ed} posts in the same location or Head Quarter. The claim of the Respondent no. 3 is that the Applicant should have been transferred out of Pune at that time only and his subsequent posting to Pune was illegal. It is seen that Original Application nos 739, 740 and 741/2014 were filed by Police Inspectors working in Navi Mumbai Police Commissionerate. The transfer in Pune Police Commissionerate were not considered by this Tribunal. Neither the Applicant nor the Respondent no. 2 or the Respondent no. 3 were parties to these Petitions. The Competent Authority has not raised that plea. Considering all these facts, observations of this Tribunal in order dated 14.8.2014 in aforesaid O.As cannot have any bearing in the present Original Application.

7. The Respondent nos 1 & 2 have stated that the Applicant was transferred due to default reported dated 23.3.2015 submitted by the Special I.G.P, C.I.D, Pune to the D.G.P regarding death of one Inayat Sharit Shaikh in Police custody. It seems that such a report against the Applicant was submitted to the Director General of Police on 23.3.2015. It was based on earlier report dated 16.3.2015, of Superintendent of Police, C.I.D, Pune and another report dated 22.3.2015 from one Shri M.D Kalekar, Assistant Police Inspector, C.I.D, Pune. All

these reports are appended to the affidavit in reply of the Respondent no. 2 dated 4.9.2015 as Annexure 7(a). The D.G.P by letter dated 10.7.2015 had transferred these reports to the Respondent no. 2 for disciplinary action against the Applicant. I have very carefully gone through the affidavit in reply filed by the Respondent no. 2 on 4.9.2015. Nowhere, it is mentioned that the Applicant was transferred as disciplinary proceedings are instituted or contemplated against him. Various grounds for transferring the Applicant are given below:

In para 9, it is mentioned that Commissioner of Police has been delegated powers to transfer Police Personnel up to the rank of Police Inspectors under proviso (2) of Section 22N(2). However, this proviso was deleted by ordinance of 16.2.2015 and no delegation of powers to transfer is permissible under the law. Only Competent Authority to order mid term transfer is the Police Establishment Board at Commissionerate level.

8. The other ground taken is that the decision of the Hon'ble Bombay High Court in Writ Petition no 3301/2010 (Shivdas's case) a posting at the same headquarters does not amount to a transfer. This issue has been examined at great length by this Tribunal in O.A nos 562, 677, 744 and 869/2015 and by order dated 20.11.2015, it was held that after amendment to the Maharashtra Police Act by Ordinance of 16.2.2015,



judgments of Hon'ble Bombay High Court in Shivadas's and other cases will not be applicable to transfers under the Maharashtra Police Act. This contention of the Respondent nos 1 & 2 has to be rejected.

9. In para 11 of the affidavit in reply the Respondent no. 2 has stated that as per Section 22N(2), the Competent Authority is empowered to order mid-term transfers on account of administrative exigencies and the order transferring the Applicant dated 23.7.2015 was made on the following grounds:

“Further the order dated 23.7.2015 shows two grounds on which all internal transfers have been made:

(1) The first ground is to “fill up the vacant posts” & (2) second ground is the completion of 2 years/ 3 years of tenure.

The Applicant is alleging that he has been transferred even though his tenure of 2 years is not complete. On this point the Respondent submits that the Applicant is not (internally) transferred when his tenure of 2 years was not completed but because it was necessary to fill up the vacant posts in the Traffic Branch, Pune, as per the letter dated 13.7.2015 sent by the Director General of Police, Maharashtra State, Mumbai, as per the discussion

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in the "Legislative Assembly. Kindly see the letter dated 13.7.2015 which has been produced on record at Exhibit R-7."

10. This is a clear admission on the part of the Respondent no. 2 that the Applicant was transferred to fill up vacant post due to administrative exigencies. However, section 22N(2) does not envisages transfers only on administrative exigency. If that contention is accepted, Competent Authority will be empowered to transfer any Police personnel any time and whole edifice of chapter II-A of the Maharashtra Police Act will collapse. In fact, all the contingencies are required to be fulfilled viz mid-term transfer can be done in exceptional circumstances and in public interest on account of administrative exigencies. Filling vacant post can be a good ground for transfer during general transfers. However, in the present case, the pressing need to fill up vacant posts in Traffic Branch was not discussed by the Police Establishment Board. In fact, it was decided to fill all vacant posts, presumably in all Police Stations and Branches. The order does not comply with the requirement of Section 22N(2). This section allows mid-term transfers for the following reasons:-

- (a) disciplinary proceedings are instituted or contemplated against the Police personnel; or

- (b) the Police Personnel is convicted by a Court of law; or
- (c) there are allegations of corruption against the Police personnel; or
- (d) the Police Personnel is otherwise incapacitated from discharging his responsibility; or
- (f) the Police Personnel is guilty of dereliction of duty.

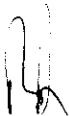
In the present case, it is mentioned in Para 13 of the affidavit in reply of the Respondent no. 2 that the Applicant's repeated indisciplined behavior and considering the present D.E proceedings against the Applicant it was necessary to transfer him. The case is examined to see whether it is covered by (a) above. None of the other contingencies are attracted. It is seen that the order of transfer was issued on 23.7.2015, while the order of Preliminary Enquiry is dated 11.8.2015 [Exhibit R-7(b)]. It is quite clear that even preliminary Enquiry against the Applicant was started after the transfer orders were passed. It is, therefore an afterthought on the part of the Respondent no. 2 to state that the Applicant was transferred due to pending D.E. A mere complaint, unless inquired into, is not sufficient to hold a person guilty of dereliction of duty. It has to be held that the Applicant's transfer is in violation of the provisions of Section 22N(2) of the Maharashtra Police Act and cannot be sustained.



11. Learned Counsel for the Respondent no. 3 has made a strong plea that this Original Application may be referred to a Larger Bench. In the additional affidavit in reply of the Respondent no. 3 dated 19.1.2016, copies of minutes of the meeting of the Police Establishment Board, Thane dated 9.6.2015 and the Police Establishment Board, Pune dated 23.7.2015 are placed on record. It is claimed that the transfer orders were issued in almost identical circumstances. Learned Counsel for the Applicant has challenged this averment and stated that there are material difference. Police Establishment Board, Pune has decided to order transfers only to fill vacancies and to shift those who had completed their tenures. This is admitted in the affidavit in reply by the Respondent no. 2. In Police Establishment Board, Thane, it was stated that considering law & order situation and administrative convenience, the transfers of Police Inspectors were discussed at great length. This Tribunal by order dated 26.11.2015 in O.A no 455/2015 has held in para 8 that:

“It appears that there were serious complaints against the Applicant which were inquired into and substance was found in them.”

The case was held to be covered by clause (e) in the proviso to Section 22N(1). Learned Counsel for the Applicant argued that in the present case, the case of the



Applicant is not covered by any of the sub-clauses in proviso to section 22N(1). This is correct position as enunciated by learned Counsel for the Applicant. Here, the report against the Applicant was not inquired into by the Respondent no. 2, who is his superior officer. ~~Departmental~~ ^{Preliminary} Enquiry was started after the transfer orders were issued. The two cases are clearly not comparable.

12. Learned Counsel for the Respondent no. 3 relied on the following judgments seeking reference to a Larger Bench, viz:

- (i) This Tribunal by order dated 21.8.2015 in O.A nos 694/2014 and 700/2014 has held that even for transfer under the Maharashtra Police Act, judgments of Hon'ble Bombay High Court in Shivdas's case (and other cases) will apply and the postings at the same headquarters will not amount to transfer. In O.A no 455/2015 by order dated 26.11.2015, this Tribunal has held that judgment of Hon'ble Bombay High Court in Shivdas's and other cases do not apply to transfers under the Maharashtra Police Act.

It is seen that the order dated 21.8.2015 in O.A nos 694 of 2014 and 700 of 2014 was given in the context of Ordinance dated 5.4.2014. The Tribunal

has clearly noted this fact in para 33 and 34 of the aforesaid order. It was clearly mentioned that transfer orders of the Applicants therein were not after the Ordinance of 16.2.2015 was promulgated. In order dated 26.11.2015 in O.A no 455/2015, it has been held that after the Ordinance of 16.2.2015, situation has clearly changed. Even at the same headquarters, tenure at a Police Station or Branch is clearly provided. It has been held that judgments of Hon'ble Bombay High Court in Shivdas's and other cases are no longer applicable to transfer under Maharashtra Police Act. There is absolutely no conflict in these two judgments of this Tribunal. There is no need to refer the matter to a Larger Bench.

- (ii) T.P Thakkar Vs. R.M Patel & others : AIR 1968 SC 372. It is held that a Single Judge of High Court is ordinarily bound to accept as correct judgments of coordinate jurisdiction and of Division Benches and of the Full Benches and the Supreme Court.

There is no question that this is the correct legal position. However, in the present case, this question does not arise as the judgment in O.A no 455/2015 is not in any way in conflict with judgment in O.A nos 694 of 2014 and 700 of 2014.

(iii) The other judgments cited by the Respondent no. 3 are on the same lines. There is no case made out to refer the matter to a Larger Bench.

13. The transfer of the Applicant by order dated 23.7.2015 from Bibvewadi Police Station to Traffic Branch cannot be upheld as it is issued in violation of provisions of Section 22N(2) of the Maharashtra Police Act. This order is, accordingly, quashed and set aside. Consequently, transfer order dated 21.7.2015 of the Respondent no. 3 also cannot survive and the same is also quashed and set aside. The Respondent no. 2 will implement this order within a period of 15 days from today. This Original Application is allowed accordingly with no order as to costs.

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai

Date : 10.03.2016

Dictation taken by A.K. Nair.