

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.638 OF 2020

DISTRICT : A' NAGAR

Shri Dattaram U. Rathod.)
Age : 45 Yrs., Occu.: Service as Additional)
Superintendent of Police, Ahmednagar,)
District : Ahmednagar.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through its Addl. Principal Secretary))
Home Department, Mantralaya,)
Mumbai - 400 032.)
2. Sauravkumar Agrawal.)
Age : Major, Occu.: Service as)
Sub-Divisional Police Officer,)
Chopda, Tal.: Chopda,)
District : Jalgaon.)...**Respondents**

Mr. K. R. Jagdale, Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents.

Respondent No.2 served but absent.

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

DATE : 01.07.2021

JUDGMENT

1. The Applicant has initially challenged the order dated 28th October, 2020 issued by Government whereby in his place, one Shri Sauravkumar Agrawal (Respondent No.2) was posted as Additional Superintendent of Police, Ahmednagar and he was kept in waiting. After filing of O.A, the

Applicant has been given posting as Superintendent of Police, Protection of Civil Rights Unit, Amaravati by order dated 21st January, 2021. The Applicant has, therefore, challenged both these orders *inter-alia* contending that he is transferred mid-term and mid-tenure in contravention of provisions of Maharashtra Police Act.

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

The Applicant is serving in the cadre of Additional Superintendent of Police. For the purpose of this OA, his certain postings with duration are required to be stated. He was SDPO at Sironcha, Gadchiroli from 2011-2014. Thereafter, he was transferred to Akola and later to Aurangabad. He was SDPO, Parbhani from 02.11.2015 to 13.10.2016. Thereafter for three years, he was with Railway Police. Then he was transferred as Additional Superintendent of Police, Nanded where he worked from 17.07.2019 to 02.10.2020. Thereafter, by order dated 30.09.2020, he was transferred as Additional Superintendent of Police, Ahmednagar. While he was serving at Ahmednagar, suddenly the Government by order dated 28.10.2020 posted Respondent No.2 – Sauravkumar Agrawal in his place and Applicant was kept in waiting. That time, the Applicant was displaced on the ground that enquiry has been ordered against him on the issue of viral video about his corruption. Therefore, PEB-1 recommended to transfer the Applicant from the post of Additional Superintendent of Police, Ahmednagar and keep him on waiting. Therefore, the Applicant has filed the present O.A. on 03.11.2020 since he was transferred mid-term and mid-tenure and secondly, without giving any posting to him. After filing of O.A, the Applicant was given posting by order dated 21.01.2021 whereby he is posted as Additional Superintendent of Police, Protection of Civil Rights, Amaravati. As such, the challenge is to the order dated 28.10.2020 whereby the Applicant as kept in waiting and also to the order dated 22.01.2021 whereby the Applicant was given posting as Additional Superintendent of Police, Protection of Rights, Amaravati.

3. Shri K.R. Jagdale, learned Advocate for the Applicant sought to assail both the orders *inter-alia* contending that the Applicant being Additional Superintendent of Police was entitled for normal tenure of two years at Ahmednagar, but he was transferred hardly within a month without there being any such extreme administrative exigency or public interest so as to invoke Section 22N(2) of Maharashtra Police Act. He further submits that the allegation of sexual harassment at work place attributed to the Applicant pertained to the period of Applicant during his tenure at Nanded and there was no reason whatsoever to transfer the Applicant again from Ahmednagar to Amaravati.

4. Shri Jagdale, learned Advocate for the Applicant further sought to assail the minutes of PEB dated 28.10.2020 whereby he was kept waiting stating that the allegation of indulgement of the Applicant in corruption on the basis of video are totally unsubstantiated and such unsubstantiated allegation cannot form the basis to transfer a Police Personnel without completing his normal tenure. Thus, the sum and substance of the submission advanced by the learned Advocate for the Applicant is that the Applicant is transferred without there being fulfilled enquiry and finding against the Applicant, and therefore, the impugned transfer order amounts to malice in law and punishment.

5. Per contra, Mrs. K.S. Gaikwad, learned Presenting Officer sought to support the impugned orders *inter-alia* contending that in view of *prima-facie* material of serious misconduct on the part of Applicant while he was working at Ahmednagar, the PEB-1 in its meeting dated 28.10.2020 while giving posting to Shri Sauravkumar Agrawal as Additional Superintendent of Police, Ahmednagar, the Applicant was transferred and kept in waiting for issuance of appropriate transfer order by Government. Thereafter, the Government by order dated 21.01.2021 posted the Applicant as Additional Superintendent of Police, Protection of Civil Rights, Amaravati. She has further pointed out that necessary steps are already taken for initiating and completing departmental

enquiries against the Applicant in view of his involvement in sexual harassment at work place which took place at Nanded. His involvement in corruption was *prima-facie* noticed in video about conversation in between Applicant and Police Constable Sambhaji Garje. The said video went viral, damaging the image of Police Department, and therefore, shifting of the Applicant to non-executive post was recommended by PEB. In this behalf, reliance is placed on the decision of Hon'ble Supreme Court **(2004) 4 SCC 245 [Union of India & Ors. Vs. Janardhan Debanath and Anr.]**.

6. In view of submission advanced at the Bar, the question posed for consideration is whether the impugned transfer orders suffer from any illegality and need interference in limited jurisdiction of judicial review by this Tribunal and the answer is in emphatic negative.

7. Needless to mention that transfer is an incidence of Government service and no Government servant can claim particular post or particular tenure as of right. However, now the transfers are governed by 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as 'Transfer Act 2005' for brevity) as well as by Maharashtra Police Act and it is not left to the whims or caprice of executives. In the present case, we are concerned with the transfer of Police Personnel regulated by the provisions of Maharashtra Police Act. There is no denying that in terms of Section 22N(1)(a), the Applicant being in the rank of Additional Superintendent of Police, his normal tenure is 2 years at one place of posting. At the same time, Section 22N(2) of Maharashtra Police Act provides that in exceptional cases, in public interest and on account of administrative exigency, the competent authority shall make mid-term transfer of any Police Personnel. Section 22N further provides that for transfer of Police Personnel above the rank of Deputy Superintendent of Police, the Home Minister is the competent authority. Suffice to say, the provisions of Maharashtra Police Act, 2005 though

ensure normal tenure of Police Personnel at one place of posting, the competent authority can transfer Police Personnel mid-term in exceptional cases, in public interest and on account of administrative exigencies.

8. Now, turning to the facts of the present case, firstly, while Applicant was serving at Ahmednagar, he was abruptly displaced by posting Respondent No.2 – Sauravkumar Agrawal in his place and Applicant was kept in waiting. That time, PEB-1 headed by Additional Chief Secretary, Home in its meeting dated 28.10.2020 recommended for transfer and he was kept waiting stating following reasons :-

“An enquiry has been ordered against Shri Dattaram Rathod, Additional Superintendent of Police on the issue of viral video about corruption. Also enquiry of Vishakha Committee is going on against him. Hence, it is recommended to transfer Shri Dattaram Rathod from the post of Additional Superintendent of Police and keep him on waiting”

9. Thus, on the basis of same video attributing corruption to the Applicant, the PEB-1 recommended mid-term transfer of the Applicant invoking Section 22N(2) of Maharashtra Police Act. In so far as contents of viral vide is concerned, the Respondents have placed on record the transcription of conversation in between Applicant and Police Constale Sambhaji Garje wherein word ‘setting’, etc. are used. The transcription of conversation in between Applicant and Police Constable Sambhaji Garje was prepared in the presence of Punchas vide Punchnama dated 28.10.2020 (Page No.9 of P.B.). Some of the conversation is as under :-

अ.पो. अधीक्षक	हॅलो
पोर्को/५७४ संभाजी बी. गर्जे	अं. नमस्कार सर
अ.पो. अधीक्षक	का रे संबळया
पोर्को/५७४ संभाजी बी. गर्जे	काय नाय, उद्या येणार आहे मी तुमच्याकडे

अ.पो. अधीक्षक	संबळ्या, कशासाठी येणार आहे.
पोर्को/५७४ संभाजी बी. गर्जे	उद्या दुपारून येणार आहे, साहेब आन मी दोघेपण येऊ राहिलो तुमच्याकडे.
अ.पो. अधीक्षक	कोणते साहेब
पोर्को/५७४ संभाजी बी. गर्जे	आमचे डेरे साहेब
अ.पो. अधीक्षक	नेवाशाचे, काय माल आणता का, काय ?
पोर्को/५७४ संभाजी बी. गर्जे	तुम्ही सांगाल तेवढं, अता लई इथं जमवून ठेवलं सगळं, व्यवस्थित
अ.पो. अधीक्षक	काय ?
पोर्को/५७४ संभाजी बी. गर्जे	सगळं, सगळं, सगळं व्यवस्थित करून ठेवलं, तुम्ही फक्त आदेश करा आता पुढचा
अ.पो. अधीक्षक	काय ?
पोर्को/५७४ संभाजी बी. गर्जे	सगळं, इथं जे काही होतं ना, सगळं, उत्तरची सगळी सेटिंग लावलेली आहे मी
अ.पो. अधीक्षक	हां
पोर्को/५७४ संभाजी बी. गर्जे	हो, मी आता तरी इथं जवळपास आठ वर्षांपासून हेच करतोय, जिल्ह्यात
अ.पो. अधीक्षक	तू सेटिंग लावली का, त्यांनी लावली
पोर्को/५७४ संभाजी बी. गर्जे	काय म्हणले, हॅलो
अ.पो. अधीक्षक	हां
पोर्को/५७४ संभाजी बी. गर्जे	नाही, हे खालची माझ्याकडेच सेटिंग असती ना बाकीची
अ.पो. अधीक्षक	तूझ्या मायला
पोर्को/५७४ संभाजी बी. गर्जे	हा, हा, हा, हा. हॅलो, हॅलो
अ.पो. अधीक्षक	आं
पोर्को/५७४ संभाजी बी. गर्जे	हा म्हटलं
अ.पो. अधीक्षक	आं
पोर्को/५७४ संभाजी बी. गर्जे	उद्या येऊ का मग
अ.पो. अधीक्षक	आं
पोर्को/५७४ संभाजी बी. गर्जे	उद्या येतो म्हटलं सर
अ.पो. अधीक्षक	सेटिंग सकट का
पोर्को/५७४ संभाजी बी. गर्जे	आं
अ.पो. अधीक्षक	सेटिंग घेवून ना सगळं
पोर्को/५७४ संभाजी बी. गर्जे	हो, हो, तुम्ही फक्त सांगा, सगळ करून ठेवल सर, मोठमोठाले पाहुणचार हेत आपल्याकडे, लई मोठमोठाले
अ.पो. अधीक्षक	आरं मग आण ना बाबा, गरज हे मला
पोर्को/५७४ संभाजी बी. गर्जे	हो ना, हो ना

अ.पो. अधीक्षक	तु सात आठ एकर शेती घेतली
पोर्को/५७४ संभाजी बी. गर्जे	हां, हां, हां, हां,
अ.पो. अधीक्षक	आम्हाला घेवू दे ना जरा, त्या याचेकडे कुठे बोधेगाव कडे
पोर्को/५७४ संभाजी बी. गर्जे	हां, हां, हां, चालतय सर
अ.पो. अधीक्षक
पोर्को/५७४ संभाजी बी. गर्जे	उदया येतो ना सर
अ.पो. अधीक्षक	हा, हा,
पोर्को/५७४ संभाजी बी. गर्जे	हो, चालेल सर, ओके, हो
अ.पो. अधीक्षक	नुसता बोलायला येतो का काय ?
पोर्को/५७४ संभाजी बी. गर्जे	काय म्हणले
अ.पो. अधीक्षक	नुसता बोलायला येतो का काय, करुन आणतो
पोर्को/५७४ संभाजी बी. गर्जे	सर आता बोललो एकदा, मग बाकी करतो ना मग, भरपूर लोक आहेत आपल्याकडे, असे नको, नको इतके मोठाले लोक हेत
अ.पो. अधीक्षक	हं
पोर्को/५७४ संभाजी बी. गर्जे	एक शब्द टाकूस तर, मोठमोठाले लोक हेत, इतकाले मोठमोठाले लोक, मस इकडं
अ.पो. अधीक्षक	हा, का
पोर्को/५७४ संभाजी बी. गर्जे	हो
अ.पो. अधीक्षक	आयला, तिकडं माझी बदली व्हायला पाहीजे होती, आहे ना.
पोर्को/५७४ संभाजी बी. गर्जे
अ.पो. अधीक्षक	हं, बाईनं लई कमवीलं का रे ?
पोर्को/५७४ संभाजी बी. गर्जे	कोणी
अ.पो. अधीक्षक	बाईनं
पोर्को/५७४ संभाजी बी. गर्जे	हो ना, अहो सर, मंथली चालू आहे, प्रत्येक पोलिस स्टेशनची पन्नास.
अ.पो. अधीक्षक	हं.
पोर्को/५७४ संभाजी बी. गर्जे	हां, आणि बाकी इतर कलेक्शन खूप हे नां, बाकी सगळे दोन नंबरवाले, ते पर्सनली कलेक्शन आहेत.

10. *Prima-facie*, conversation indicts the Applicant for serious misconduct and corruption. As such, it is in the context of said conversation in video which went viral when Applicant was serving at Ahmednagar, the PEB-1 in its meeting dated 28.10.2020 recommended for immediate transfer of the Applicant. The recommendation were accepted by Hon'ble Home Minister being competent authority for

transfer of the Applicant, as seen from Page Nos.39 to 42 of P.B. Thus, the PEB opined that the continuation of the Applicant at Ahmednagar in view of serious misconduct attributed to him was not conducive for Police Department, and therefore, he was immediately transferred and kept in waiting. The Tribunal cannot substitute its opinion for that of Competent Authority. The existence of reasons on record is a matter capable of objective verification. Whereas, satisfaction as to reasons is a matter of subjective satisfaction. Once test of existence is satisfied, the subjectivity of satisfaction cannot be gone into by Tribunal unless it is a case of *malafide* exercise of power.

11. In this behalf, the learned P.O. rightly referred to the decision of Hon'ble Supreme Court in **Janardhan Debanath's** case (cited supra) where in Para No.14, it has been held as under :-

“14. The allegations made against the respondents are of serious nature, and the conduct attributed is certainly unbecoming. Whether there was any misbehaviour is a question which can be gone into in a departmental proceeding. For the purposes of effecting a transfer, the question of holding an enquiry to find out whether there was misbehaviour or conduct unbecoming of an employee is unnecessary and what is needed is the prima facie satisfaction of the authority concerned on the contemporary reports about the occurrence complained of and if the requirement, as submitted by learned counsel for the respondents, of holding an elaborate enquiry is to be insisted upon the very purpose of transferring an employee in public interest or exigencies of administration to enforce decorum and ensure probity would get frustrated. The question whether respondents could be transferred to a different division is a matter for the employer to consider depending upon the administrative necessities and the extent of solution for the problems faced by the administration. It is not for this Court to direct one way or the other. The judgment of the High Court is clearly indefensible and is set aside. The writ petitions filed before the High Court deserve to be dismissed which we direct. The appeals are allowed with no order as to costs.”

12. Apart, in the present case, the Government had also issued Charge-sheet to the Applicant as seen from Charge-sheet dated 18th June, 2021 (Page No.106 of P.B.) on the allegation of corruption coupled with some other charges. Charge No.1 in Charge-sheet dated 18th June, 2021 is as under :-

“दोषारोप बाब क्र.१:

दिनांक १६.१०.२०२० रोजी रात्री २०.०३ वाजता पोलीस शिपाई /५७४ संभाजी भारत गर्जे, नेमणूक नेवासा पोलीस स्टेशन, अहमदनगर यांनी त्यांच्या मो.क्र. ८३०८८३६५७४ वरून डॉ. दत्ताराम राठोड, तत्कालीन अपर पोलीस अधीक्षक, अहमदनगर यांच्या मो.क्र. ८०८०२७१२५० वर फोन केला असता, या वेळी झालेल्या ३३७ सेकंदांच्या संभाषणात डॉ. दत्ताराम राठोड, तत्कालीन अपर पोलीस अधीक्षक, अहमदनगर यांनी पोशि/गर्जे यांचेशी “काय माल आणता का, काय”. “तु सेटिंग लावली का ? त्यांनी लावली ? “सेटिंग घेऊन ना सगळं” ? “आरं, कर ना सुरु लगेच, आत्ताच करू देना” हं, बाईन लई कमवल का रे?” आयला, तिकडे माझी बदली व्हायला पाहिजे होती, आहे ना ! वगैरे संभाषण केले आहे. सदर संभाषणाचा सविस्तर ट्रान्सक्रिप्ट अहवाल सोबत जोडला आहे. सदर संभाषण व्हाट्सअप द्वारे व्हाईस क्लिपचे स्वरूपात वायरल होऊन पोलीस दलाची प्रतिमा मलिन झाली आहे.

अशा प्रकारे डॉ. दत्ताराम राठोड, अपर पोलीस अधीक्षक म्हणून कार्यरत असताना नितांत सचोटी आणि कर्तव्यपारायणता ठेवणे आवश्यक असताना अत्यंत बेशिस्त, बेजबाबदारपणाचे व बेपर्वा वर्तन करून महाराष्ट्र नागरी सेवा (वर्तणूक) नियम, १९७९ मधील नियम क्रमांक ३ चे उल्लंघन केले आहे. म्हणून दोषारोप.”

13. As such, the Respondent No.1 not only transferred the Applicant but it had also initiated the D.E. against him to take the matter to the logical conclusion. Therefore, it cannot be said that transfer was malicious or in colourable exercise of power.

14. In so far as allegation of sexual harassment at work place while Applicant was serving at Nanded is concerned, it is explicit from the letter of Special Inspector General of Police, Mumbai dated 17th June, 2020 (Page No.32 of P.B.) that while Applicant was serving at Nanded, there were several complaints of women employee alleging sexual harassment and the allegations were enquired into by Committee constituted under Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and Applicant was found guilty for 18 charges. Consequently, the proposal for further action i.e. for major punishment under the provisions of Maharashtra (Discipline and Appeal) Rules, 1979 has been forwarded to the Government and it is in process.

15. In addition to above, the Applicant is also facing one more D.E. initiated by Charge-sheet dated 23.05.2016 attributing serious misconduct and corruption while he was serving as SDPO, Sironcha as seen from Charge-sheet at Page Nos.43 to 48 of P.B.

16. It is on the above background, the Applicant was displaced mid-term while he was serving at Ahmednagar by order dated 28.10.2020 and kept in waiting. Later, PEB-1 in its meeting held in January, 2021 recommended for the posting of Applicant as Additional Superintendent of Police, Protection of Civil Rights, Amaravati (Page No.86 of P.B.) and the same has been approved by Hon'ble Home Minister. Suffice to say, there is approval of competent authority for mid-term transfer of Applicant from Ahmednagar as well as for giving him posting at Amaravati on non-executive post. It is thus *ex-facia* that having regard to the serious misconduct of indulgement in corruption as *prima-facie* noticed in view of conversation in between Applicant and Police Constable Sambhaji Garje as well as making a video viral, his continuation on executive post at Ahmednagar was found harmful for the administration. Therefore, the decision was taken to transfer him on non-executive post.

17. True, in the minutes of PEB dated 28.10.2020, no details of alleged conversation in between Applicant and Police Constable Garje is recorded. What is recorded that in view of viral video of corruption, the PEB recommended to transfer the Applicant and keep him on waiting. The details of conversation in between Applicant and Police Constable Garje are produced along with Affidavit as reproduced above. As such, this is not a case where no reasons are mentioned in impugned order or in contemporary record maintained by the Office. If the reasons are sufficiently forthcoming in the contemporary record which necessitated mid-term transfer of the Applicant, the non-mention of details of alleged misconduct in PEB will not render the impugned action vulnerable much less illegal.

18. Suffice to say, *prima-facie*, the competent authority had sufficient material to transfer the Applicant from executive post to non-executive post. His immediate transfer was necessitated in public interest and to enforce decorum as well as to ensure probity in public life, as

contemplated in Section 22N(2) of Maharashtra Police Act. The issue is indeed squarely covered by the decision of Hon'ble Supreme Court in **Janardhan Debanath's** case (cited supra). As such, the challenge to the impugned orders is devoid of merit and O.A. deserves to be dismissed. Hence, the following order.

ORDER

The Original Application is dismissed with no order as to costs.

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

Mumbai
Date : 01.07.2021
Dictation taken by :
S.K. Wamanse.

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