

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.642 OF 2020

DISTRICT : Thane

Shri Bhimraj Rohidas Ghadge,)
Age 54/6 years, Occ. Police Inspector,)
R/at 1004, B Type, A-wing, Wadhwa Meadows,)
Bhorwadi, Khadakpada, Kalyan (W),)
Dist. Thane 421301.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Addl. Chief Secretary,)
Home Department,)
Mantralaya, Mumbai 400 032.)
2. The Director General of Police, M.S.)
Shahid Bhagat Singh Road, Colaba,)
Mumbai 400 001.)
3. The Commissioner of Police, Police)
Commissioner office Building, Thane city,)
Near Kalwa Bridge, Thane West,)
Thane 400601.)....**Respondents**

Shri Bhimraj R.Ghadge, Applicant in person, Applicant in person.

Smt. Archana B. K., Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 04.03.2021

JUDGMENT

1. The Applicant has invoked the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985 challenging the order dated 29.10.2020 whereby he is transferred from Thane to Akola.

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

The Applicant is serving in the cadre of Police Inspector (PI). He joined the establishment of Respondent No.3 –Commissioner of Police, Thane on 01.10.2013 and since then he was continued in Thane Commissionerate till passing of the impugned order dated 29.10.2020 whereby he was transferred from Thane to Akola. While Applicant was serving at Thane, he was suspended in view of the registration of crimes against him by order dated 23.08.2015. However, later Respondent No.3 – the Commissioner of Police, Thane by order dated 06.12.2018 reinstated the Applicant in service and posted him at control room, Thane. At the time of general transfer of 2020, Respondent No.3 – the Commissioner of Police, Thane called upon the options of PIs including the Applicant for transfers who have completed six years tenure by letter dated 18.03.2020. However, the Applicant not responded to it by making representations to various authorities including the Hon'ble Chief Minister up to Commissioner of Police, Thane stating that he was under suspension for more than three years and the said period was required to be deducted from his tenure of Thane and he should not be considered due for transfer. However, Respondent No.2 – Director General of Police in view of recommendations of Police Establishment Board (PEB) transferred the Applicant from Thane to Akola which is impugned in the present Original Application.

3. The Applicant in person sought to assail the impugned transfer order on the following grounds:-

- (a) The suspension period from 23.08.2015 to 06.12.2018 is required to be excluded from his tenure of Thane, and he cannot be said completed normal tenure of six years in terms of the provisions of Maharashtra Police Act.

(b) He is facing four criminal cases subjudice in the Court at Kalyan, District Thane, and therefore, even in completion of normal tenure, he should have been accommodated nearby Thane District so as to attend the cases, pending against him but in view of his transfer at Akola he is facing much hardship and inconvenience.

4. Per contra, Smt. Archana B.K., learned Presenting Officer submits that admittedly, the Applicant was transferred on the establishment of Respondent No.3 –Commissioner of Police, Thane in 2013 and joined at Bajarpeth Police Station on 01.10.2013. She has further pointed out that the Applicant has completed normal tenure of six years in Commissionerate area and was due for general transfer of 2020 which could not be effected in April or May in terms of the provisions of Maharashtra Police Act due to Covid-19 Pandemic situation. Later in terms of G.R. dated 04.09.2020 and 15.10.2020, the deadline was extended upto 30.10.2020 and accordingly, in view of the recommendations of PEB, the Applicant was transferred by order dated 29.10.2020 to Akola. She has further pointed out that the Applicant did not submit any option, and therefore, now he cannot raise grievance of hardship in posting at Akola.

5. Indisputably, the Applicant joined Commissionerate, Thane on 01.10.2013. In terms of Section 22N(d) of Maharashtra Police Act, he was entitled to six years tenure at Thane. True, he was suspended by order dated 23.08.2015 and later reinstated in service on 06.12.2018. In so far as, suspension period is concerned, nothing is pointed out from Maharashtra Police Act or from any other Rules that suspension period was required to be excluded for counting service tenure of the Applicant at Thane. Needless to mention that suspension only prohibits a Government servant from discharging his duties when D.E. is contemplated or the criminal offence is registered against a

Government servant. As such, suspension does not cease relationship of employer and employee. He gets subsistence allowance during the period of suspension. I do not find any provision in Maharashtra Police Act or in any other Rules for exclusion of suspension period from tenure period for the purpose of transfer. During the period of suspension, headquarter of the Applicant was at Thane. Suffice to say, the suspension period cannot be excluded from tenure in Commissionerate area.

6. Learned P.O. rightly pointed out that the decision rendered by this Tribunal in **O.A.No.124/2009 (Shri A. V. Waghmare V/s State of Maharashtra & Ors.)**, dated 01.04.2010 and **O.A.No.94/2011 (B.R. Andhalkar V/s State of Maharashtra & Ors.)**, decided on 06.05.2011 wherein the Tribunal has consistently held that while counting the period of service for transfer, the suspension period should not be excluded. I see no reason to deviate from the said decision.

7. Suffice to say, the submission made by the Applicant that his suspension period was required to be excluded holds no water. Since, he joined in Thane Commissionerate on 01.10.2013 he had completed more than six years at the time of general transfer of 2020.

8. As per the provisions of Maharashtra Police Act, the general transfers were required to be effected in the month of April or May of every year. However, in so far as general transfer of 2020 is concerned, due to Covid-19 Pandemic situation and lock-down, the transfers could not be effected in the month of April and May. Therefore, the Government initially by G.R. dated 07.08.2020 and 14.08.2020 extended the deadline for issuance of general transfer up to 30.09.2020. Thereafter, again by G.R. dated 15.10.2020, the deadline was extended up to 30.10.2020. As such, due to Covid-19 pandemic situation, time for issuance of general transfers were

extended in the interest of employees as well as from the point of administrative difficulties and exigencies. Accordingly, the Applicant was transferred by order dated 29.10.2020 before deadline of 30.10.2020. Suffice to say, it has to be construed as general transfer for all purposes.

9. Since the Applicant was due for transfer having completed more than six years, the Respondent No.3 by notice dated 18.03.2020 invited options of PI who have completed their normal tenure of six years. The name of the Applicant is in the list annexed to the notice dated 18.03.2020. However, instead of giving options, the Applicant made representation dated 20.03.2020 raising a ground that he was under suspension for more than three years, and therefore, cannot be considered as due for transfer. Material to note that he did not submit any options in his representation. When the matter was placed before PEB headed by the Director General of Police a President of PEB having noticed that the Applicant was due for transfer and did not give any options considering vacancy position, he was transferred at Akola. The minutes of PEB are at page Nos.93 to 108.

10. True, it appears that the Additional Chief Secretary, Home department was absent in the meeting. However, absence of one member does not render transfer order illegal. The PEB was consists of six members in the cadre of Director General of Police, Police Commissioner, Director General ACB and two additional Director Generals of Police. Except Chief Secretary other members attended the meeting and approved the transfers.

11. True, the Applicant's representation dated 20.03.2020 as pointed out by the Applicant was not decided either way and there was no communication to that effect to the Applicant. After filing of O.A., the Tribunal by order dated 10.12.2020 suggested the Director General of Police to consider the representation of the Applicant for

giving posting nearby Thane. However, learned P.O. has tendered a letter dated 01.03.2020 stating that request of the Applicant is rejected by PEB. Indeed, in representation in alternative, the Applicant ought to have given some options so that it could have considered while passing transfer orders. Having not done so, the Applicant has to blame himself.

12. Needless to mention that the transfer is an incident of service and Government servant can be transferred from one place to another for administrative exigencies. When a Government servant is due for transfer such transfer orders unless found *mala fide* or in contravention of express provisions of law it should not be interfered with by the Tribunal. This is not a case of transfer in guise of punishment or mala fide exercise of powers. The Applicant was due for transfer and having not given any options, the PEB posted him at Akola in the light of vacancy position and suitability vis-à-vis requirement of the administration. This being the position, I see no illegality in the transfer order and challenge to the transfer order dated 29.10.2020 is devoid of any merit.

13. However, admittedly the Applicant is required to attend the criminal cases which are subjudice in Kalyan Court. The Applicant is required to attend the hearings and has to come from Akola which is around 500 km. He is, therefore, required to take leave all the time. Now, the general transfers of 2021 are not far away. Therefore, it would be appropriate if the Applicant makes representation afresh for getting transfer nearby Thane and the Respondent No.2 shall consider it sympathetically and shall pass appropriate orders.

14. The totality of the aforesaid discussion leads me to sum up that the challenge to the impugned transfer order dated 29.10.2020 holds

no water and O.A. deserves to be dismissed. Hence the following order:-

ORDER

- (A) Original Application is dismissed.
- (B) Liberty is given to the Applicant to make representation afresh citing his difficulties and giving options for transfer. If any such representation is made within a month from today, it be considered by the Respondent No.2 in general transfer of 2021 if possible sympathetically and shall pass appropriate orders and the same shall be communicated to the Applicant.
- (C) No order as to costs.

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

Place : Mumbai
Date : 26.11.2019
Dictation taken by : VSM
Uploaded on :
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