

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.747 OF 2020

DISTRICT : SATARA

Shri Ganesh Sopan Waghmode.)
Age : 36 Yrs., Occu.: Assistant Police)
Inspector, Mhaswad Police Station,)
District Satara and residing at At & Post)
Mhaswad, Police Colony, Taluka Man)
(Dahiwadi), District : Satara – 415 509.)...**Applicant**

Versus

1. Superintendent of Police, Satara.)
Having its office at 93, Mallhar Peth,))
Satara.)
2. Shri Bajirao J. Dhekane.)
Assistant Police Inspector,)
Satara City Police Station,)
Under transfer to Mhaswad Police)
Station.)...**Respondents**

Mr. M.D. Lonkar, Advocate for Applicant.

Mrs. A.B. Kololgi, Presenting Officer for Respondent No.1.

Mr. S.S. Dere, Advocate for Respondent No.2.

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

DATE : 25.02.2021

JUDGMENT

1. The Applicant has invoked the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 challenging transfer

order dated 07.12.2020 whereby he was transferred from Police Station, Mhaswad, District Satara to District Special Branch, Satara.

2. The Applicant is serving in the cadre of Assistant Police Inspector on the establishment of Respondent No.1 – Superintendent of Police, Satara. By order dated 16.08.2019, he was transferred to Mhaswad Police Station. He being API, claims to have two years' tenure at Police Station or Branch in terms of Section 22N(1)(c) of Maharashtra Police Act. However, abruptly, the Respondent No.1 transferred him mid-term and mid-tenure from Mhaswad Police Station to District Special Branch, Satara by order dated 07.12.2020 on the ground of alleged misconduct and posted Respondent No.2 in his place. The Applicant has challenged this transfer *inter-alia* contending that he is displaced mid-term and mid-tenure in colourable exercise of powers under Section 22N(2) of Maharashtra Police Act only to favour Respondent No.2 and the transfer is unsustainable in law.

3. Shri M.D. Lonkar, learned Advocate for the Applicant sought to assail the impugned transfer order contending that Police Establishment Board (PEB) headed by Respondent No.1 transferred the Applicant mid-term and mid-tenure without there being any such administrative exigency, mechanically, relying on the default report submitted by Additional Superintendent of Police, Satara. He was fair enough to concede that in the matter of transfer, the powers of judicial review are limited, but sought to canvass that the decision of PEB is arbitrary and misuse of powers. According to him, the explanations given by the Applicant to the show cause notice ought to have been considered before taking any decision of transfer. He has further pointed out that the charges attributed in default report mainly pertain to alleged non-performance of duties with efficiently, and therefore, the order is punitive.

4. Per contra, Smt. A.B. Kololgi, learned Presenting Officer in reference to reply contends that there were several complaints of non-

performance, insubordination, omissions in investigation, etc. and after preliminary enquiry, the Additional Superintendent of Police submitted his detailed report, which was placed before PEB. She has pointed out that the PEB in its meeting dated 07.12.2020 deliberated on the aspect and unanimously decided to transfer the Applicant to District Special Branch, Satara invoking Section 22N(2) of Maharashtra Police Act. She thus submits that no *malafides* can possibly be attributed and challenge to the impugned order holds no water.

5. Shri S.S. Dere, learned Advocate for Respondent No.2 also supported the impugned transfer order. He has pointed out that there is full compliance of Section 22N(2) in letter and spirit. He admits that the Respondent No.2 was not due for transfer and had made request for transfer. However, that itself cannot be construed that only to favour Respondent No.2, the Applicant is transferred, particularly when serious lapses and misconduct was surfaced in preliminary enquiry, which necessitated mid-term and mid-tenure transfer of the Applicant.

6. In view of submissions advanced at the Bar and pleadings, the question posed for consideration whether the impugned transfer order dated 07.12.2020 suffers from any legal infirmity so as to warrant interference by this Tribunal and the answer is in emphatic negative.

7. Needless to mention that the transfer is an incident of service and the Government servant can be transferred from one post to another post on account of administrative exigency. It is well settled that the Tribunal should not interfere in the matter of transfer unless it is in contravention of express provisions of law or *malafide*. Where reason for transfer is administrative nature and competent authority acts *bonafide*, the Tribunal should not interfere in such administrative business. At the same time, undoubtedly, if transfer is in colourable exercise of power as a punishment, in that event, interference by judicial forum is must.

8. The Applicant being Police Personnel, the transfers are now governed by the provisions of Maharashtra Police Act and it is not left to the whims and caprice of executives. In the wake of directions given by Hon'ble Apex Court in **(2006) 8 SCC 1 (Prakash Singh and Ors. Vs. Union of India and Ors.)**, the substantial amendments were made in Maharashtra Police Act in 2015, thereby ensuring fixed tenure at a post and at the same time, powers are given to competent authority for mid-term transfer of Police Personnel in exceptional cases, in public interest and on account of administrative exigencies as contemplated under Section 22N(2) of Maharashtra Police Act. As per Section 22N(i)(c), the Police Officers of the rank of ASI, PSI and PI shall have normal tenure of two years at a Police Station or Branch, four years in a District and eight years in a range. In so far as local Crime Branch, Special Branch in a District or Commissionerate, the normal tenure shall be three years. Whereas, as per Section 2 (6A), there shall be general transfer of Police Personnel in the month of April or May in every year on completion of their normal tenure. Whereas, as per Section 2(6B), mid-tenure transfer means the transfer of Police Personnel other than in general transfer.

9. Section 22N(2) of Maharashtra Police Act provides for mid-term transfer of Police Personnel in exceptional cases, in public interest and on account of administrative exigencies by the competent authority. In the present case, the PEB constituted under Section 22J(1) is the competent authority for mid-term transfer.

10. There is no denying that the Applicant was posted at Mhaswad Police Station by order dated 16.08.2019 and has not completed his normal tenure. However, the PEB invoked Section 22N(2) of Maharashtra Police Act for his transfer. Only because Respondent No.2 is posted on his request for transfer in place of Applicant, that ipso-facto does not mean that the Applicant is transferred only to favour Respondent No.2 in colourable exercise of power. There has to be some material/strong circumstances to substantiate colourable exercise of power or misuse of power, which is completely missing. On the contrary,

the decision of PEB is well founded on the enquiry report of Additional Superintendent of Police highlighting serious lapses, non-performance, faulty investigation, etc.

11. The perusal of record reveals that Respondent No.1 – Superintendent of Police, Satara by his letter dated 09.07.2020 (Page No.29 of P.B.) directed Additional Superintendent of Police, Satara to conduct enquiry about the defaults of the Applicant. In turn, the Additional Superintendent of Police issued Show Cause Notice to the Applicant to which the Applicant had given his explanation on 10.07.2020 (Page No.108 of P.B.). The Additional Superintendent of Police, Satara conducted preliminary enquiry and submitted detailed report to Superintendent of Police on 13.07.2020, which is at Page Nos.30 to 52 of P.B. *inter-alia* highlighting serious lapses viz. insubordination, failure to take legal action to curb offences under N.D.P.S. Act, failure in detection of crime of burglary, keeping investigation of serious offences pending for considerable time, various flaws in investigation carried out by him, etc. Shri Dhiraj Patil, Additional Superintendent of Police, Satara, therefore, opined that there was total failure on the part of Applicant as an Incharge Officer of Mhaswad Police Station and he has no control over the staff and found unable to carry out the duties efficiently.

12. The report was accordingly placed before PEB by circulation and in view of serious lapses on the part of Applicant, the PEB unanimously resolved that Applicant's transfer is necessitated and accordingly, conscious decision was taken to transfer him mid-tenure. The PEB had also noted that the Applicant was also subjected to punishment of withholding of increment for his misconduct by order dated 05.08.2020, but there was no improvement in his performance. Thus, the PEB accepted the preliminary enquiry report and from the point of administrative exigency, Applicant's transfer was found inevitable.

Suffice to say, the transfer order is backed by cogent and enough material.

13. True, the explanation given by the Applicant to show cause notice seems not considered or referred by PEB while taking decision to transfer the Applicant. However, that itself will not render transfer order illegal or *malafide*, particularly when reasons for his transfer are sufficiently borne out from the record. There is no such requirement of recording detail reasons dealing with each and every aspect, as if decision of Court. What requires is *prima-facie* satisfaction of competent authority and it is for the Authority to find out solution for the problem and Tribunal cannot sit in appeal to substitute the decision of Authority.

14. Indeed, where the allegations made against a Government servant are of serious nature, insistence of regular D.E. for the purpose of effecting transfer is totally unwarranted. The question whether employee could be transferred to a different division is necessarily a matter for the employer to consider depending upon administrative necessities and to extent of solution for the problem faced by the administration. The Tribunal or Court should not sit in appeal and should not substitute opinion or decision taken by competent authority. The Hon'ble Supreme Court in **(2004) 4 SCC 245 (Union of India & Ors. Vs. Shri Janardhan Debanath & Anr.) decided on 13.02.2004** held that whether there was any misbehavior is a question, which can be gone into in the departmental proceeding and for the purpose of effecting transfer, holding of elaborate enquiry to find out whether there was any such misconduct is unnecessary and what is needed is the *prima-facie* satisfaction of the competent authority. The Hon'ble Supreme Court further held that if elaborate enquiry is to be insisted upon, the very purpose of transfer of employee in public interest or exigencies of administration to enforce decorum and to ensure probity would get frustrated.

15. In so far as aspect of meeting of PEB in circulation is concerned, there is nothing to prohibit so. As such, in given case, there could be meeting of competent authority by circulation and that itself could not render the decision of it illegal. The requirement is of satisfaction of the competent authority. Needless to mention that existence of reasons is a matter capable of objective verification. Whereas, the satisfaction as to the reason is a matter of subjective satisfaction. Once the test of existence of reason is satisfied, the subjectivity of satisfaction cannot be gone into by the Tribunal unless it is a case of *malafide* exercise of power or there is something to show that the decision is arbitrary. In the present case, in view of cogent material on record, it is nigh impossible to say that the PEB had any malice against the Applicant and transfer is in colourable exercise of power.

16. True, the Additional Superintendent of Police submitted his report on 13.07.2020 and the transfer order was issued after about four months i.e. on 07.12.2020. I find no merit in the submission advanced by the learned Advocate for the Applicant that this four months' delay shows non-necessity or non-urgency of the transfer. Though Respondent No.2 – Superintendent of Police was expected to take decision on Enquiry Committee Report within reasonable time, it seems to have delayed may be due to certain other administrative exigencies or workload. Be that as it may, this factor of four months' delay will not wipe out or outweigh the necessity of transfer, which is based on cogent and sufficient material.

17. The necessary corollary of aforesaid discussion leads me to conclude that the challenge to the transfer order 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 : 25.02.2021

Dictation taken by :

S.K. Wamanse.

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