

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.843 OF 2018

DISTRICT : PUNE

Shri Ajay Ramdas Bhapkar.)
Age : 37 Yrs., Working as Police Constable)
(Buckle No.1093), Chakan Police Station,)
Pimpri-Chinchwad Police Commissionerate,)
Pune and residing at Green Estate, Flat No.304,)
B-Block, Chakan, Pune.)...**Applicant**

Versus

1. The Additional Commissioner of Police,)
Pimpri-Chinchwad Police Commissionerate)
Pune.)
2. The Superintendent of Police, Pune)
(Rural), Having Office at Chavan Nagar,)
Pashan Road, Pune – 8.)
3. The State of Maharashtra.)
Through Principal Secretary,)
Home Department, Mantralaya,)
Mumbai - 400 032.)...**Respondents**

Mr. A.V. Bandiwadekar, Advocate for Applicant.

Mr. A.J. Chougule, Presenting Officer for Respondents.

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

DATE : 01.01.2019

JUDGMENT

1. The Applicant has challenged his transfer order dated 10.09.2018 passed by Additional Commissioner of Police, Pimpri-Chinchwad thereby transferring / shifting him to the Office of Superintendent of Police, Pune (Rural) invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Briefly stated facts giving rise to this application are as follows :

The Applicant is Police Naik and since 25.05.2014, he was attached to Chakan Police Station, Pune which was within the jurisdiction of Pune Police Station (Rural). On 28.05.2018, the Government of Maharashtra has created/established new Police Commissionerate viz. Pimpri-Chinchwad Police Commissionerate. In view of creation of new Police Commissionerate, in all 352 Police Personnel were transferred and shifted from establishment of Superintendent of Police, Pune (Rural) to the newly created Police Commissionerate viz. Pimpri-Chinchwad Police Commissionerate. Accordingly, on 14.08.2018, the Respondent No.2 i.e. (The Superintendent of Police, Pune (Rural)) passed an order thereby transferring and shifting 329 Police Constables and Police Naiks to the establishment of Police Commissionerate, Pimpri-Chinchwad. The name of Applicant is at Serial No.146 in the order dated 14.08.2018. As such, from 14.08.2018, the Applicant was transferred to the establishment of Police Commissionerate, Pimpri-Chinchwad and since then, he was working under Police Commissioner, Pimpri-Chinchwad. However, suddenly, by impugned order dated 10.09.2018 passed by Respondent No.1 - Additional Commissioner of Police, Pimpri-Chinchwad, he was transferred and shifted back to the office of S.P, Pune (Rural) without assigning any reason whatsoever. This order dated 10.09.2018 is under challenge in the present O.A.

The Applicant sought to challenge the impugned order dated 10.09.2018 on the ground that, it is made mid-term as well as mid-tenure transfer without recommendation of Police Establishment Board (PEB), and therefore, it is in breach of mandatory provisions of Maharashtra Police Act. He further contends that there is no Notification published in Official Gazette regarding establishment of PEB at Pimpri-Chinchwad Police Commissionerate. Furthermore, the said transfer order has been issued by Respondent No.1 (Additional Commissioner of Police) who is not competent to transfer him back from the office of Commissioner of Police, Pimpri-Chinchwad. He made representation on 11.09.2018, but in vein. On these pleadings, the Applicant contends that the impugned order is unsustainable being in violation of mandatory provisions of Maharashtra Police Act.

3. The Respondents resisted the application by filing Affidavit-in-reply *inter-alia* denying that the impugned order dated 10.09.2018 suffers from any infirmity or illegality. Admittedly, in view of establishment of new Police Commissionerate Pimpri-Chinchwad by the Government of Maharashtra, the S.P. Pune (Rural) on 14.08.2018 transferred 329 Police Personnel from his establishment to newly created Police Commissionerate Pimpri-Chinchwad. The Respondents further contend that the PEB was formed on 05.09.2018 under the Chairmanship of Commissioner of Police, Pimpri-Chinchwad. As regarding impugned order dated 10.09.2018, the Respondents contend that the behavior and conduct of the Applicant was not befitting to the Police Personnel, and therefore, the PEB decided to repatriate him to the establishment of S.P, Pune (Rural). Accordingly, by order dated 10.09.2018, the Applicant was repatriated to the office of S.P, Pune (Rural). On this line of pleadings, the Respondents contend that the impugned order is not transfer within the eye of law, but it is repatriation to the original Department. As such, the challenge to the impugned order is devoid of merit and prayed to dismiss the application.

4. Heard Mr. A.V. Bandiwadekar, learned Advocate for the Applicant and Mr. A.J. Chougule, learned Presenting Officer for the Respondents.

Reasons

5. At the outset, it needs to be stated that, admittedly, the Applicant was working as Police Naik at Chakan Police Station which was within the jurisdiction of Superintendent of Police, Pune (Rural). There is no dispute that on 14.08.2018, S.P, Pune (Rural) has transferred 329 Police Personnel including the Applicant to newly created Police Commissionerate Pimpri-Chinchwad which has come into existence on 28.05.2018. As such, there is no denying that the Applicant was transferred to newly created Police Commissionerate Pimpri-Chinchwad and since 14.08.2018, he was working on the establishment of Police Commissionerate Pimpri-Chinchwad.

6. Now, question comes whether the impugned order dated 10.09.2018 admittedly issued by Respondent No.1 (Additional Commissioner of Police) amounts to mere repatriation to the original Department or it is transfer in eye of law. Admittedly, no reasons are set out for transfer or repatriation of the Applicant in order dated 10.09.2018. It is cryptic, laconic, hand-written order passed by Additional Commissioner of Police.

7. At this juncture, it would be apposite to refer relevant provisions of Maharashtra Police Act. As per Section 22N(1)(b), the normal tenure of Police Constabulary shall be of five years at one place of posting. Whereas as per Section 2(6)(a), the general transfer is defined as posting of Police Personnel in the Police Force 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. "Mid-term transfer" is defined in Section 6(b) and it meant transfer of Police Personnel in

the Police Force other than the general transfer. As such, the reading of these provisions together makes it quite clear that, if Police Personnel is posted from one post, office or department to another post, office or department other than in the month of April and May of every year, it has to be termed as "Mid-term transfer".

8. The procedure for general transfers as well as mid-term transfers are governed by Section 22N. In so far as the transfers at Police Commissionerate level is concerned, the competent authority for general transfer is PEB at Commissionerate level. As regard mid-term or mid-tenure transfer, Section 22N(2) provides that in exceptional cases, in public interest and / or on account of administrative exigency, the competent authority is empowered to make mid-term transfer of any Police Personnel. Furthermore, as per proviso, the State Government may transfer any Police Personnel prior to the completion of his normal tenure in following cases.

- “(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
- (e) the Police Personnel is guilty of dereliction of duty.”

9. The aforesaid provisions were incorporated in Maharashtra Police Act by way of amendment in 2015 in view of the directions given by Hon'ble Supreme Court in case of ***Prakash Singh and Ors. Vs. Union of India & Ors. : (2006) 8 SCC 1***. These amendments were made to ensure minimum tenure of Police Personnel with an object that they should function without fear or favour and they shall not be subjected to indiscriminate transfer or shifting as per the whims of the authority concerned.

10. Now, turning to the facts of present case. Though the Respondents sought to contend that the impugned order dated 10.09.2018 is mere repatriation and not transfer in eye of law, it is nothing but misconceived and fallacious. Admittedly, by order dated 14.08.2018, the Applicant along with other Police Personnel were transferred to the office of newly created Police Commissionerate Pimpri-Chinchwad and since then, they became part and parcel of this new establishment. They were discharging their duties under the control of Commissionerate of Pimpri-Chinchwad with effect from 14.08.2018. This being the factual position, the Applicant cannot be transferred or shifted to other Department i.e. S.P, Pune (Rural) without invoking the provisions contemplated under Section 22N of Maharashtra Police Act. Once the Applicant has become part and parcel of the establishment of Commissioner of Police, Pimpri-Chinchwad, he cannot be sent back by mere colouring it as a repatriation to the original Department. In the eye of law, it is transfer from one Department to another Department and furthermore, it being made before completion of 5 years normal tenure, it has to be termed as mid-term as well as mid-tenure transfer.

11. Once the impugned order is held as a transfer, the second question would naturally come whether it is preceded by the recommendation of PEB. Though the Respondents has produced letter dated 05.09.2018 to show that PEB has been formed at Pune Police Commissionerate, Pimpri-Chinchwad w.e.f. 15.08.2018, significantly the minutes of PEB recommending the transfer of the Applicant is not forthcoming. The Respondents in its reply though pleaded that PEB has discussed the matter of Applicant and in view of allegations of misconduct against him, recommended his name for transfer, surprisingly, no such minutes of PEB are forthcoming. Therefore, it cannot be assumed that there was no such meeting of PEB recommending the name of Applicant for his transfer. In other words, it is a case of adverse inference to be drawn for non-

producing the minutes of PEB for the perusal of Tribunal. Suffice to say, in absence of recommendation of PEB, the impugned order cannot be sustained.

12. Secondly, as rightly pointed out by learned Advocate for the Applicant that there is no publication of establishment of PEB at Pimpri-Chinchwad Police Commissionerate in Official Gazette as mandated by Section 22-I(1) which mandates that the State Government shall by Notification in Official Gazette constitute a Board to be called "Police Establishment Board" at Commissionerate level for the purposes of Act. In the present case, the Respondents have simply produced one letter dated 05.09.2018 (Page No.34 of Paper Book) which merely shows formation of PEB and nothing more. The Respondents have not produced the copy of Official Gazette wherein it requires to be notified as mandated by Section 22-I(1) of Maharashtra Police Act.

13. Thirdly, the competency of Respondent No.1 i.e. Additional Commissioner of Police who passed the impugned transfer order is also in question. Any such transfer, which required to be made after recommendation of PEB should be by the Commissioner of Police. Therefore, impugned order having been passed by Additional Commissioner of Police is without jurisdiction and not sustainable in law. There cannot be transfer of Police Personnel by Additional Commissioner of Police from Police Commissionerate to another Department i.e. S.P, Pune (Rural). In the present case, there is effect of transfer of Applicant out of Commissionerate, that too, without recommendation of PEB.

14. Lastly, the reference of alleged misconduct for the transfer of Applicant as pleaded in the reply filed by Respondents needs to be dealt with. The Respondents in their reply though sought to contend that there were allegations of misconduct against the Applicant, save and except their words in the pleadings, absolutely no other material is forthcoming to show its nature, gravity, etc. Not a single document in the form of show cause notice or nature of

misconduct has seen the day of light. This again gives rise to adverse inference against the Applicant that there is no such misconduct on the part of Applicant, much less sufficient enough to transfer him out of Police Commissionerate to another Department. Apart in case of allegation of misconduct, there has to be some preliminary enquiry justifying necessity of transfer which is completely missing in the present case.

15. In view of above, I have no hesitation to sum-up that the impugned order dated 10.09.2018 cannot be termed as mere repatriation and it has all the trappings of transfer from one Department to another Department. It is clearly unsustainable in the eye of law having been in contravention of provisions of Section 22N of Maharashtra Police Act as discussed above. The impugned order is, therefore, liable to be set aside. Hence, I pass the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned transfer order dated 10.09.2018 is hereby quashed and set aside.
- (C) The Applicant be reposted in the office of Police Commissionerate, Pimpri-Chinchwad within one month from today.
- (D) No order as to costs.

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

Mumbai

Date : 01.01.2019

Dictation taken by :

S.K. Wamanse.