

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO. 951 OF 2015

DISTRICT :PUNE

Shri Ramdas Rajaram Shelake,)
Aged 47 yrs, Working as)
Assistant Police Inspector,)
Transferred from Jejuri Police)
Station to control Room,)
R/O. A/303, Bhakti Heritage,)
Opp. Aundh Police Chowky,)
Pune-7.)
Address For Service of Notice:)
As above.)...**Applicant**

VERSUS

- 1) The Superintendent of Police,)
Pune [R], Having Office at Chavan)
Nagar, Pashan Road, Pune-8.)
- 2) Shri Ramdas Baliram Wakode,)
Aged Adult, Working as)
Assistant Police Inspector,)
Transferred from Shirur Police)
Station to Jejuri Police Station)
in place of the Petitioner.)
- 3) The State of Maharashtra,)
Through Principal Secretary,)
Home Department, Having)
Office at Mantralaya,)
Mumbai – 400 032.)....**Respondents**

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Shri A.V. Bandiwadekar, learned Advocate and Shri K.R. Jagdale, learned Advocate holding for Shri A.V. Bandiwadekar, for the Applicant.

Shri A.J. Chougule, learned Presenting Officer for the Respondents No.1 & 3.

Smt. Punam Mahajan, learned Advocate for the Respondent No.2.

CORAM : Shri Rajiv Agarwal, Vice-Chairman

DATE : 2.05.2016

ORDER

1. Heard Shri A.V. Bandiwadekar, learned Advocate and Shri K.R. Jagdale, learned Advocate holding for Shri A.V. Bandiwadekar, for the Applicant, Shri A.J. Chougule, learned Presenting Officer for the Respondents No.1 & 3 and Smt. Punam Mahajan, learned Advocate for the Respondent No.2.

2. This Original Application has been filed by the Applicant challenging his transfer from Jejuri Police Station to Control Room, Pune and transfer of the Respondent No.2 to Jejuri Police Station in his place by order dated 30.10.2015.

3. Learned Counsel for the Applicant argued that the Applicant was posted to Jejuri Police Station by order dated 24.8.2014. Learned Counsel for the Applicant stated that one Shri Shivtare, leader of Shiv Sena and present Minister

pressurised the Applicant to take illegal action, which he refused to do. He made a station Diary entry regarding the incident on 19.9.2014 and also reported the matter to the Respondent No.1 on 20.9.2014. There was another incident when a relative of the said Minister tried to bring pressure on the Applicant, who made a Station Diary entry regarding that incident on 20.3.2015 and reported the fact to the Respondent no.1. The Minister, Shri Shivtare made complaints to the Hon'ble C.M. about the Applicant, seeking his transfer by letters dated 27.5.2015 and 29.7.2015. Hon'ble C.M. made an endorsement on the letter of Shri Shivtare and directed the Special Inspector General of Police (Spl. I.G.P.) Kolhapur to take necessary action. Special Inspector General of Police, Kolhapur issued instructions to the Respondent No.1 and the impugned order dated 30.10.2015 was issued as a result.

4. Learned Counsel for the Applicant argued that the Applicant has been transferred on extraneous consideration. He has not completed his tenure of two years at Jejuri Police Station. The Respondent No.1 has no authority to transfer the Applicant under the Maharashtra Police Act. Learned Counsel for the Applicant stated that no Police Establishment Board (P.E.B.) at District level was constituted by the State Government when the impugned order was passed. Considering all these facts, the impugned order is bad in law and cannot be sustained.

5. Learned Presenting Officer (P.O.) argued on behalf of the Respondents no.1 & 3 that the Applicant was transferred from Jejuri Police Station, before completion of his tenure, as there were serious allegations against him. Learned P.O. categorically denied that the Applicant was transferred due to political pressure. The Applicant behaved with Police Inspector Shri Gaud of Saswad Police Station in an indisciplined manner on 17.8.2015. An enquiry was conducted by Sub-Divisional Police Officer, Bhor, who found substance in the complaint. A show cause notice was issued to the Applicant on 30.10.2015 regarding this incident. A complaint was received against the Applicant that he demanded Rupees Four Lakhs from one Shri Kalte and accepted Rupees Two Lakhs. Additional Superintendent of Police, Baramati enquired into this and his report found that the conduct of the Applicant was suspicious. Learned P.O. for the Respondents stated that there were various complaints against the Applicant and after inquiries, substance was found in those complaints. As a result the Applicant was transferred. Learned P.O. for the Respondents argued that the transfer order dated 30.10.2015 has been replaced by another order dated 4.1.2016. This order has approval of the Police Establishment Board at District level as constituted by the State Government on 2.12.2015 and this order is not challenged by the Applicant.

6. Learned Counsel for the Respondent No.2 argued that the Applicant has not challenged the order of the Respondent No.1 dated 4.1.2016, which has been issued in

full compliance of the provisions of the Maharashtra Police Act. Learned Counsel for the Respondent No.2 stated that the Applicant has not pleaded in O.A. that a mid-tenue transfer can be ordered only by the State Government. Similarly, he cannot claim that he is not challenging order dated 4.1.2016, as it is null and void. Any order has to be declared a nullity by a Competent Court, and the Applicant has no authority to decide legal validity of an order. Learned Counsel for the Respondent No.2 argued that the Applicant has been transferred by the duly constituted Police Establishment Board for reasons which meet the requirement of Maharashtra Police Act by order dated 4.1.2016 which he has not challenged. This O.A. is not maintainable.

7. It is an admitted fact that the Applicant was posted to Jejuri Police Station on 24.08.2014 and he had not completed his tenure of two years when he was transferred by impugned order dated 30.10.2015. The Applicant has claimed that his transfer was due to political pressure. There is some material on record to suggest that pressure was brought on him on a couple of occasions. The Respondent No.1 has, however, claimed that the Applicant was transferred as there were serious complains against him which were verified and not due to political pressure.

8. The Applicant was transferred before the completed his tenure of two years at a Police Station prescribed in Section 22N(1) (c) of the Maharashtra Police Act. Proviso to

Section 22N(1) empowers the State Government to transfer a Police Personnel before completion of his normal tenure in case of any of the situation mentioned in (a) to (e). Under Section 22N(2), the Competent Authority can make mid-term transfers of any Police Personnel for grounds mentioned in Sub Section 22N(1) and in exceptional cases, in public interest and on account of administrative exigencies. The Competent Authority in the present case is the P.E.B. at District Level. Mid-term tenure is defined as in Section 2(6B) of the Act as a transfer which is not a General Transfer. General Transfer is transfer in the month of April or May and after a Police Personnel has completed his tenure. In the present case, the Applicant was transferred by order dated 30.10.2015, which was a mid-term transfer. State Government could have transferred the Applicant, before completion of his tenure on any of the grounds mentioned in Section 22N(1). In addition, the Competent Authority i.e. P.E.B at District level could have transferred the Applicant on any of the grounds mentioned in Section 22 N(2). The order dated 30.10.2015 was, however, passed by the Respondent No.2, who is not the Competent Authority to pass such order. Such an authority is P.E.B. at District Level constituted by the State Government by notification in the official gazette under Section 22J-1 of the Maharashtra Police Act. That notification was issued only on 2.12.2015. The order dated 30.10.2015 was not sustainable as it was not issued by the Competent Authority. The Respondent No.2 has claimed that the meeting of P.E.B. at District Level for Pune (Rural) District was held on 4.1.2016 and it was

decided to cancel the order dated 30.10.2015 and issue order dated 4.1.2016 transferring the Applicant from Jejuri Police Station to Police Control Room.

9. Coming to the validity of 4.1.2016 order, it is stated by the Respondent No.1 that the Applicant was transferred as there were serious complaints against him. Minutes of the meeting of P.E.B. held on 4.1.2016 are appended as R-6 to the affidavit filed by the Respondent No.1 on 20.1.2016. The minutes mention that the Applicant was transferred due to default by him. It would have been better, if the P.E.B. had specifically mentioned the specific grounds from amongst the grounds mentioned in 22N(2) of the Act on which the Applicant was being transferred. However, it is seen that there was a report from Additional Superintendent of Police, Baramati to the Respondent No.1, regarding public spat between the Applicant and Senior Police Inspector Shri Gand, and Shri Shelke was held main culprit in that episode. There was another report from Additional S.P., Baramati dated 12.10.2015 wherein it was reported that:-

“ प्रस्तुत प्रकरणात स.पो.नि.शेळके यांचा गुन्ह्याचे तपासात प्रत्यक्ष संबंध व तपासी अंमलदार पो.स.ई. श्री पिंगूवाले यांना मार्गदर्शन करण्याऐवजी स्वतः गुन्ह्याचा तपास करित असल्याचे दर्शवून पेशचाची मागणी करून अर्थपूर्ण व्यवहार केल्याचे एकंदर चौकशीवरून निर्दर्शनास येत आहे.”

There is another report dated 12.10.2015, wherein it is found that the Applicant had brought some religious saint to police station and the saint was seated in the chair of Incharge Officer in Jejuri Police Station against the instructions in this regard.

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10. All these reports are before 30.10.2015. Additional S.P. had conducted enquiries in response to letters from the Respondent No.1 dated 24.8.2015, 4.10.2015 and 6.10.2015. From these reports, it can be said that the Applicant was transferred by order dated 30.10.2015 on the basis of complaints which were verified. It is difficult to uphold the contention of the Applicant that order dated 30.10.2015 was passed due to political pressure.

11. Proviso to Section 22 N(1) contains ground (c), which reads:-

“ (c) there are allegation of corruption against the Police Personnel.”

It is seen that the report dated 12.10.2015 has found substance in the complaint against the Applicant that he was interfering in investigation in criminal case, with a view to extract money. The case of the Applicant is clearly covered under this clause. It will also be covered under (e) *ibid*. The impugned transfer order dated 30.10.2015 was justified in so far as the ‘reasons’ given for the transfer of the Applicant. However, as the order was not issued by the Competent Authority, it was cancelled and a fresh order dated 4.1.2016 has been issued, which appears to be legal and proper.

12. Learned Advocate for the Applicant Shri Jagdale, holding for learned Advocate Shri Bandiwadekar argued that the challenge in this O.A. is to the order dated 30.10.2015, which was issued without competence and for extraneous

reasons. The order dated 4.1.2016 was passed during the pendency of this O.A., that too without bringing this fact to the notice of this Tribunal. This fresh order is result of bias and want of impartiality. Learned Advocate for the Applicant Shri Jagdale argued that this order is a nullity in the eyes of the law. He cited judgments of this Tribunal dated 26.10.2015 in O.A.No.191 of 2015 and 1.12.2015 in O.A.No.385 of 2015 in support of his contentions.

13. Learned Advocate Smt. Mahajan reiterated that the mere claim that an order is a nullity in law is not sufficient. A competent court has to give such a finding. It was not necessary for the Respondent No.1, to take permission of this Tribunal before issuing order dated 4.1.2016. The Respondent No.1 has cancelled earlier order dated 30.10.2015 and issued a fresh order which is proper & legal and has not been challenged by the Applicant.

14. I have already concluded that order dated 30.10.2015 was unsustainable as it was not issued by the Competent Authority under the Maharashtra Police Act. The Respondent No.1 has himself cancelled the aforesaid order. It is also held that neither order dated 30.10.2015 nor the order dated 4.1.2016 is issued on extraneous consideration. It is also held that order dated 4.1.2016 is legal and proper. The Applicant has chosen not to challenge it.

15. The judgments of this Tribunal quoted by the Applicant would support his claim that order dated

30.10.2015 was invalid, on the ground that it was not passed by the Competent Authority. But that order has already been cancelled, though this fact has not been stated in the order dated 4.1.2016. The reference to order dated 5.3.2015 in the aforesaid order is also unnecessary. The same can be said regarding approval from Special I.G.P. The order does not refer to the meeting of the P.E.B. at District Level held on 4.1.2016. The notification issued by State Government establishing P.E.B. at District level, has, however been specifically mentioned. Though the order dated 4.1.2016 is not drafted carefully, it does convey that the orders were passed by the competent authority viz. P.E.B. at District level after consideration of default reports against the Applicant. The order substantively meets the requirements of the Maharashtra Police Act.

16. Having regard to the aforesaid facts and circumstances of the case, this O.A. is dismissed with no order as to costs.

Sd/-
(RAJIV AGARWAL)
(VICE-CHAIRMAN)

Date : 2.05.2016

Place : Mumbai

Dictation taken by : SBA

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