

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 963/2017 (S.B.)

Dilip S/o Ramdas Shinde,
Aged about 44 years,
Occ. Service, Police Head Constable B.C. No.687,
R/o IUDP Colony, Washim, Tq. & Dist. Washim.

Applicant.

Versus

- 1) State of Maharashtra,
through its Secretary Department of Home,
Mantralaya, Mumbai-32.
- 2) Director General of Police,
Shahid Bhagatsingh Marg,
Kulaba, In front of Regal Talkies,
Mumbai.
- 3) Special Inspector General of Police,
Office of Special IGP, Amravati,
Tq. & Dist. Amravati.
- 4) Superintendent of Police,
Washim, Office of S.P., Washim,
Tq. & Dist. Washim.
- 5) Police Station Officer,
Police Station Jaulka,
Tq. Malegaon, Dist. Washim.

Respondents.

Shri O.Y. Kashid, Advocate for the applicant.

Shri S.A. Sainis, P.O. for the respondents.

**Coram :- Hon'ble Shri Anand Karanjkar,
Member (J).**

Date of Reserving for Judgment : 16th December, 2019.

Date of Pronouncement of Judgment : 2nd January, 2020.

JUDGMENT

(Delivered on this 2nd day of January, 2020)

Heard Shri O.Y. Kashid, learned counsel for the applicant and Shri S.A. Sainis, learned P.O. for the respondents.

2. In this application the applicant is claiming that the order passed by the respondent no.4 dated 10/8/2017 is malafide exercise of jurisdiction; therefore, it be quashed and set aside and direction be given to the respondents to give effect to the transfer order dated 31/5/2017.

3. It is contention of the applicant that he joined service as Police Constable in the year, 1993, in due course he was promoted as Police Head Constable. In the year 2017, the applicant was posted at Jaulka Police Station, Tq. Malegaon, Dist. Washim. The applicant's mother was aged 72 years and she was suffering from paralysis, the applicant was also suffering from Facial Palsey and due to other family difficulties, representation was made by the applicant for his transfer from Jaulka to Washim head quarter. The applicant was called for the interview by the Establishment Board on 29/5/2017 and thereafter transfer order was issued on 31/5/2017 by which the

applicant was transferred from Jaulka Police Station to Police head quarters, Washim.

4. It is submitted by the applicant that he was not relieved, consequently, he made requests on 1/8/2017 and 8/8/2017 by writing letters to the respondent no.4. The respondent no.4 thereafter passed order dated 10/8/2017 and cancelled the transfer of the applicant from Jaulka to Washim on the ground that the applicant misrepresented the facts and on the basis of false medical grounds, he sought transfer to Washim. The transfer was also set aside on the ground that the applicant was on seek leave from 23/5/2017 to 27/6/2017 and during this seek leave, the applicant appeared before the Establishment Board and the respondent no.4 on 29/5/2017. It is contention of the applicant that thereafter the respondent no.4 issued him show cause notice why his two increments shall not be withheld, consequently, the applicant approached this Tribunal.

5. The respondent nos. 3 to 5 have submitted their reply which is at page no.54 of the P.B. and have justified the action. The main contention of the respondents is that the applicant sought the transfer on false ground. It is contended by the respondents that the transfer order was cancelled on the ground that the applicant was on seek leave from 23/5/2017 to 27/6/2017 for a period of 36 days and though he was on seek leave, he appeared before the Establishment

Board, which indicates that the applicant was on seek leave for false reasons and he submitted false medical certificates and proceeded on seek leave. It is contention of the respondents that conduct of the applicant was unbecoming a public servant and consequently his transfer to Washim was cancelled and the respondent no.4 issued him show cause notice why his two increments should not be withheld. It is submitted that there is no illegality in the order and therefore the O.A. is liable to be dismissed.

6. There is no dispute about the fact that the representation was made by the applicant through proper channel. The representation and medical certificate were examined by the Police Station Officer, Jaulka and Deputy Superintendent of Police. Annex-A-3 is the representation for the transfer. In Annex-A-3 it is mentioned that the applicant is suffering from paralysis, his mother was suffering from paralysis and for these grounds transfer was sought. It was alleged in the representation that no medical aid was available at Jaulka and the applicant was under treatment of the medical practitioners at Washim.

7. After perusing Annex-A-3 it seems that there is endorsement of the Police Officer that the medical papers submitted by the applicant regarding his illness were examined by the office and the nature of the illness of the applicant was genuine and therefore

recommendation was made to transfer the applicant from Jaulka to Washim head quarter.

8. Annex-A-8 is the impugned order by which the respondent no.4 cancelled the earlier transfer order dated 31/5/2017. In Annex-A-8 the respondent no.4 has observed that the applicant was on seek leave from 23/5/2017 to 27/6/2017 for 36 days and though he was on seek leave, the applicant appeared before the Police Establishment Board on 29/5/2017. For these reasons, the respondent no.4 was pleased to cancel the order.

9. After perusing the Annex-A-8 it seems that there was nothing reliable before the respondent no.4 when this order was passed for arriving to the conclusion that medical certificates produced by the applicant were false. Similarly, when show cause notice was issued by the respondent no.4 to the applicant there was nothing for holding that false medical certificates were produced by the applicant. It is pertinent to note that after perusing the medical certificates produced by the applicant, the Police Station Incharge, Jaulka and Dy. S.P. made recommendation to transfer the applicant from Jaulka and it was specifically mentioned in the recommendation that nature of the illness was genuine. In these circumstances, in my opinion before taking a drastic action, it was necessary for the respondent no.4 to refer the applicant to the medical board to remove the doubts. It is

pertinent to note that in Annex-A-4 medical certificate issued by Dr. S.R. Sarda and it was mentioned that the applicant was suffering from Facial Palsey. Facial Palsey is a neurological disorder which disfigures the part of the face and for which the applicant was taking treatment and for which he was advised to take a rest. It is not a case that the applicant was bed ridden.

10. It appears from the papers that justification was given by the applicant that he was taking medical treatment from Dr. S.R. Sarda who was attached to the General Hospital, Washim. The applicant has produced documents along with Annex-A-12. The applicant was under treatment of General Hospital, Washim. He was examined by the Medical Officer on 22/5/2017 and medicine was prescribed. Again he was examined on 24/6/2017. The applicant was also examined by Dr. Ratnalikar, M.D. (Medicine). He was referred for pathological tests. The reports issued by the pathology lab are also produced by the applicant.

11. It was contention of the applicant that message was received by him when he was on seek leave that he was called by the respondent no.4 to appear before the Police Establishment Board and consequently the applicant obeyed order, though he was on seek leave and appeared before the Police Establishment Board. The learned counsel for the applicant submitted that nature of the illness of

the applicant was such that it was possible for him to appear before Police Establishment Board, consequently, the applicant appeared and justified the cause for his transfer to Washim. It is submitted that though this entire material was in custody of the office of respondent no.4 without examining it, the respondent no.4 jumped to the conclusion that false medical certificates were produced by the applicant, because, the applicant appeared before the Police Establishment Board when he was on seek leave. In my opinion, in absence of any other contrary medical opinion, the respondent no.4 formed his opinion. As a matter of fact, as the respondent no.4 had doubts regarding genuineness of the medical certificates produced by the applicant, the respondent no.4 could have referred the applicant to the Civil Surgeon, General Hospital, Washim or to the Medical Board for detailed examination, but without doing so, unilaterally inference was drawn by the respondent no.4 that medical certificates produced by the applicant were false. I have already observed that the medical certificates were examined by the Police Station Incharge, Jaulka and Deputy Superintendent of Police and both the Authorities came to the conclusion that the illness of the applicant was genuine. In view of this matter, I am compelled to say that the approach of the respondent no.4 unilaterally forming opinion that for false reasons the applicant remained absent from the duty after availing seek leave and he

produced false medical certificates was wrong. Once it is accepted that the approach of respondent no.4 was not reasonable, then inference is to be drawn that the subsequent order cancelling transfer of the applicant is not fair exercise of the jurisdiction. In this case, the respondent no.4 thereafter issued show cause notice why two increments of the applicant should not be withheld and thereafter without going into the depth, mechanically passed the order and directed to withhold two increments of the applicant.

12. In view of this matter, I accept the submission of the applicant that there was no propriety or reasonable cause to cancel the transfer order dated 31/5/2017. In view of this, I pass the following order –

ORDER

The O.A. is partly allowed. The respondent no.4 is directed to give effect to the transfer order dated 31/5/2017. The order dated 10/8/2017 is hereby cancelled. The respondent no.4 is directed to release the withheld salary of the applicant. Liberty is given to the applicant to challenge the punishment awarded by the respondent no.4 by filing separate O.A. No order as to costs.

Dated :- 02/01/2020.

(A.D. Karanjkar)
Member (J).

*dnk..

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 02/01/2020.
and pronounced on

Uploaded on : 03/01/2020..