

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.98 OF 2021

DISTRICT : PUNE

Shri Rajendra Chindhu Sonawane)
Age 56 years, Working as PSI,)
R/at 3, B/2, Dapodi, Pune 411012.).... **Applicant**

Versus

- 1) The State of Maharashtra,)
Through Additional Chief Secretary,)
Home Department, Mantralaya,)
Mumbai 400 032.)
- 2) Director General of Police, M.S.)
Mumbai, Maharashtra Police H.Q.)
Shahid Bhagat Singh Marg, Colaba)
Mumbai 400 001.)
- 3) The Commissioner of Police, Pimpri)
Chinchwad Police Commissionerate)
Premlok Park, Chinchwad, Pimpri-)
Chinchwad, Pune 411 033.) **..Respondents**

Smt. Punam Mahajan, learned Advocate for the Applicant.

Smt. Kranti Gaikwad., learned Presenting Officer for the Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER(J)

DATE : 11.10.2021

JUDGMENT

1. The Applicant has challenged the transfer order dated 29.10.2020 issued by the Respondent No.2 – Director General of Police whereby he is transferred from Police Commissionerate, Pimpri Chinchwad to Kolhapur Range invoking Section 19 of the Administrative Tribunal Act, 1985.

2. Shortly stated facts giving rise to the O.A. are as follows:-

The Applicant is serving in the cadre of Police Sub Inspector(PSI). Initially, he was appointed on the establishment of Police Commissionerate, Pune and later promoted to the post of Police Sub Inspector in 2013. He was PSI on the establishment of Police Commissionerate, Pune from 13.11.2013 to 14.08.2018 as PSI. In 2018, Pimpri-Chinchwad Police Commissionerate was created as of a separate Police Commissionerate and the Applicant was transferred and posted on the establishment of Pimpri-Chinchwad Police Commissionerate in 2018. The Police Commissionerate, Pune by order dated 23.10.2018, transferred the Applicant from Pimpri – Chinchwad Encroachment Division to Alandi Traffic Branch. The Applicant claims to be entitled for six years tenure in Pimpri-Chinchwad Police Commissionerate which was created as a separate Police Commissionerate in 2018 by virtue of Section 22N(1) (d) of Maharashtra Police Act which *inter-alia* provides that the police officers of the rank of PSI, API and PI, a normal tenure shall be at six years at Commissionerate other than Mumbai and eight years at Mumbai Commissionerate. However, the Respondent No.2- Director General of Police by order dated 29.10.2020 transferred him from Pimpri-Chinchwad to Kolhapur Range treating the Applicant as a due for general transfer. The Applicant has challenged the transfer order *inter-alia* contending that it is mid-term and mid-tenure transfer.

3. Learned Counsel for the Applicant has challenged the transfer order dated 29.10.2020 on the following grounds:-

(A) In the year 2020, due to covid-19 pandemic situation, general transfers of police personnel which were due in April-May, 2020 were extended only up to 15.10.2020 by issuance of G.R. dated 30.09.2020 but in the present case, the Applicant is transferred by order dated 29.10.2020 which is after the cut-off date in terms of G.R. dated 30.09.2020 and on that ground alone the transfer order is

unsustainable in law since it take partake of character of mid-tenure transfer.

(B) The Applicant was posted on the establishment of Pimpri-Chinchwad Police Commissionerate in the year 2018 in the wake of creation and establishment of independent Police Commissionerate, and therefore, in law, he was entitled for six years tenure afresh in Pimpri-Chinchwad Police Commissioneate in terms of Section 22N(1) (d) of Maharashtra Police Act but he is transferred mid-tenure without making out the case of mid-tenure transfer as required under Section 22N(2) of Maharashtra Police Act.

4. Whereas, Smt. Kranti Gaikwad, learned Presenting Officer sought to contend that in view of the Circular issued by Respondent No.2 dated 16.03.2020, tenure of the Applicant in Pune Police Commissioenrate was to be clubbed along with his tenure in Pimpri-Chinchwad Police Commissionerate since Pimpri – Chinchwad Police Commissionerate was carved out from erstwhile Pune Commissionerate area. She, therefore, submits that the Applicant has completed more than six years tenure together in Pune Commissioenate and Pimpri-Chinchwad Police Commissionerate, and therefore, he was considered due for general transfer and accordingly came to be transferred by order dated 29.10.2020 and no exception can be taken to it.

5. In view of submission advanced at a bar, the issue posed for consideration is whether the Applicant's transfer order dated 29.10.2020 can be construed as a general transfer order so as to sustain the same in law.

6. Smt. Punam Mahajan, learned Counsel for the Applicant has pointed out that the issue involved in the present O.A. is squarely covered by the decision tendered by this Tribunal recently on

01.10.2021 in **O.A.No.635/2020 (Vishwajit Vasant Khule V/s State of Maharashtra & Ors.)**.

7. It is well settled that transfer is an incident of service and are made in exercise of administrative powers to meet the exigencies of service. However, now the transfers of Police Personnel are governed and regulated by the provisions of Maharashtra Police Act. Unless the transfers are in contravention of law or made with ulterior motives or in patent arbitrary exercise of powers, the Court would decline to interfere in such matter. Suffice to say, if the transfer is found in contravention of mandatory provisions of Maharashtra Police Act, then it needs to be struck down.

8. Indisputably, the Applicant being in the cadre of P.I. was entitled for normal tenure of six years as provided under Section 22N(1)(d) of Maharashtra Police Act, which *inter-alia* provides for fix tenure of Police Personnel, in view of the amendment brought into statute in view of decision of Hon'ble Supreme Court in **Prakash Singh and others Vs. Union of India and others (2006) 8 SCC 1**. Suffice to say, the law prescribes for normal tenure of Police Personnel of various cadres. However, Section 22 N(2) empowers the competent authority to transfer Police Personnel mid-term in public interest and on account of administrative exigencies in exceptional cases.

9. General Transfers and Mid-Term Transfers are defined in Section 2(6-A) and (6-B) of Maharashtra Police Act, which are as follows :-

“2(6-A) “General Transfer” means posting of a 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].

(6-B) “Mid-term Transfer” means transfer of a Police Personnel in the Police Force other than the General Transfer].”

10. Whereas Section 22N(1)(d) is reproduced as follows :

“22N. Normal tenure of Police Personnel, and Competent Authority [(1) Police Officers in the Police Force shall have a normal tenure as mentioned below, subject to the promotion or superannuation:-

(d) for Police Officers of the rank of Police Sub-Inspector, Assistant Police Inspector and Police Inspector a normal tenure shall be of six years at Commissionerate other than Mumbai, and eight years at Mumbai Commissionerate;

11. Thus, in terms of provisions of Maharashtra Police Act, general transfers are required to be effected once in a year i.e. in April or May. However, in 2020 due to covid-10 pandemic situation, general transfers could not be effected in the month of April or May, and therefore, the Government by issuance of G.R. extended the time of general transfers. In other words, the police personnel who were due for general transfers in the month of April or May, the issuance of transfer orders in respect of those only were extended from time to time. As such, police personnel must have completed his normal tenure in the month of April or May so as to construe him due for general transfer and what was extended was issuance of transfer orders.

12. Now turning to the facts of the present case, the Applicant has categorically pleaded that the deadline for issuance of general transfers of police personnel were extended up to 15.10.2020 by G.R. dated 30.09.2020 (Page No.24 of PB) but impugned transfer order has been issued after the cut-off date on 29.10.2020 and on this count along the impugned transfer order is unsustainable in law. Material to note that in Affidavit-in-Reply, it is no where the case of the Respondents that the deadline set out as 15.10.2020 by G.R. dated 30.09.2020 has been extended to particular date, and impugned

transfer order was issued before the cut-off date. When the Applicant has categorically pleaded and challenged the legality of the transfer order on the ground that it has been issued after the cut-off date it was incumbent on the part of Respondents to establish that cut-off date was extended to a particular date and impugned transfer order has been issued before the said cut-off date. However, no such material is produced to substantiate that the deadline was extended. Indeed, there is no such counter pleading in the reply nor any such G.R. is placed on record establishing extension of cut-off date. This being the position in law, the transfer order dated 29.10.2020 being not issued in terms of extended cut-off date, it has to be construed as a mid-tenure transfer in the eye of law since it takes partake of character of mid-tenure transfer which would be assailable in absence of invoking of Section 22N(2) of Maharashtra Police Act which empowers competent authority to transfer police personnel mid-tenure on administrative exigency or public interest. Here interestingly, the Applicant has been transferred considering him as a due for general transfer without invoking Section 22N(2) of Maharashtra Police Act. The impugned transfer order is thus not in consonance with the provisions of Maharashtra Police Act and on this ground alone, it is liable to be quashed.

13. Apart, admittedly the Applicant was transferred on the establishment of Pimpri-Chinchwad Police Commissionerate by order dated 14.08.2018. Therefore, by virtue of Section 22N(1(d)), he was entitled to six years tenure in Pimpri-Chinchwad Police Commissionerate. True, before his posting and transfer to Pimpri-Chinchwad Police Commissionerate, the Applicant was in Pune Commissionerate from 2013. Therefore, the question would be whether his tenure in Pune Commissionerate could be clubbed with tenure with Pimpri-Chinchwad Police Commissionerate so as to term impugned transfer order as a general transfer order on the basis of circular issued by Director General of Police on 16.03.2020.

14. At this juncture, it would be apposite to see relevant paragraph from Circular dated 16.03.2020 which is at page No.35 of PB which is as follows:-

“अ) विहित कालावधी पूर्ण झालेले (Tenure Complete):-

- i.** दिनांक ३१/०९/२०२० पर्यंत किंवा त्यापूर्वी ज्या नि:शस्त्र पोलीस उपनिरीक्षक, नि:शस्त्र सहायक पोलीस निरीक्षक व नि:शस्त्र पोलीस निरीक्षकांनी सध्या कार्यरत असलेल्या घटकामध्ये विविध पदांवर (पोलीस उपनिरीक्षक, सहायक पोलीस निरीक्षक व पोलीस निरीक्षक) सलगपणे म्हणजे परिक्षेत्रात ०८ वर्षे, मुंबई आयुक्तालयात ०८ वर्षे व मुंबई व्यतिरिक्त इतर आयुक्तालयात ०६ वर्षे अशी सेवा / कर्तव्य बजावले आहे, असे बदलीपत्र नि:शस्त्र पोलीस उपनिरीक्षक, नि:शस्त्र सहायक पोलीस निरीक्षक व नि:शस्त्र पोलीस निरीक्षक (पिंपरी-चिंचवड पोलीस आयुक्तालयाची निर्माती पुणे शहर व पुणे ग्रामीण या घटकाच्या कार्यक्षेत्रांमधूनच झालेली असल्याने पिंपरी चिंचवड आयुक्तालयात जे पोउपनि, सपोनि व पोनि हे पुणे ग्रामीण /पुणे शहर घटकातून वर्ग झालेले आहेत, अशा पोउपनि, सपोनि व पोनि यांचा पुणे ग्रामीण / पुणे शहर घटकातील हजर दिनांक विचारात घेऊन पिंपरी चिंचवड आयुक्तालयातील कालावधीची गणना करण्यात यावी.”

15. Thus, it is on the basis of Circular dated 16.03.2020, the Respondent No.3 clubbed the tenure of Applicant spent in Pune Commissionerate with his tenure in Pune-Chinchwad Police Commissionerate which is obviously contrary to spirit and object of Maharashtra Police Act. There could be no such clubbing of tenures unless it is specifically provided under the provisions of Maharashtra Police Act when Act specifically provides for six years tenure in Police Commissionerate other than Mumbai Police Commissionerate where it is eight years tenure. Once the Pimpri-Chinchwad Police Commissionerate is created as a separate Police Commissionerate and came into existence in 2018, the tenure of police personnel appointed on the establishment of Pimpri-Chinchwad Police Commissionerate are entitled to prescribed tenure as provided in law. The Applicant being Police Inspector, in law, he is entitled to six years tenure in Pimpri-Chinchwad Police Commissionerate. Suffice to say, any such Circular which is in conflict with law cannot be allowed to prevail otherwise the very purpose and object of the provisions contained in Maharashtra Police Act would be defeated. The Circular cannot

override or supplant the statutory provisions, and therefore, clubbing of tenures to construe the impugned transfer as a general transfer order is totally unsustainable in law.

16. The necessary corollary of aforesaid discussion leads me to sum up that the impugned transfer order is in contravention of provisions of Maharashtra Police Act and liable to be quashed. Hence the following order:-

ORDER

- (A) Original Application is allowed.
- (B) Impugned transfer order dated 29.10.2020 qua the Applicant is hereby quashed and set aside.
- (C) The Applicant be posted on the post he was transferred from within two weeks from today.
- (D) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J