

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.983 OF 2018

DISTRICT : PUNE

Shri Amol Vilas Gaikwad.)
Age : Adult, Occu. : Service,)
R/at. Katraj Kondwa Road, Behind New Magic)
Gents Parlour, Near Katraj Flyover,)
Katraj, Pune 411 046.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Addl. Chief Secretary,)
Home Department, Mantralaya,)
Mumbai 400 032.)
2. Shri Shashikiran Kashid.)
Sub Divisional Police Officer, Basmath,)
Basmathnagar, Dist : Hingoli – 431 512.)...**Respondents**

Mr. S.S. Dere, Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents.

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

DATE : 10.01.2019

JUDGMENT

1. In this Original Application, the Applicant has challenged the transfer order dated 29th October, 2018 invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. The Applicant is working as Sub Divisional Police Officer. By order dated 22nd May, 2017, he was transferred from Deulgaon Raji, District Buldhana to SDPO, Roha Division, District Raigad. He has not completed normal tenure as contemplated under Section 22N of Maharashtra Police Act. However, by impugned order dated 29th October, 2018, he has been transferred from S.D.P.O, Roha Division, District Raigad to SDPO, Wasmat, District Hingoli. The Applicant has challenged this impugned order contending that it is mid-term as well as mid-tenure transfer without following the procedure under Section 22N of Maharashtra Police Act. He contends that, Section 22(2) of Maharashtra Police Act have no application in the present case, as no case of transfer in public interest and on account of administrative exigency is made out. He further contends that the transfer has been effected only to accommodate Respondent No.2 in his place. He, therefore, prayed to quash and set aside the impugned order.

3. The Respondent No.1 has filed Affidavit-in-reply (at Page 20 of Paper Book) inter-alia denying the allegation made by the Applicant. The Respondent sought to contend that transfer being an incidence of service, the Applicant has no vested right to remain at one posting for particular period. In the present case, the Police Establishment Board (PEB) found the transfer of the Applicant necessary in public interest and on account of administrative exigency and accordingly, recommended his transfer. Furthermore, the recommendation of PEB has been approved by the competent authority vis. Hon'ble Chief Minister.

The Respondent No.1, therefore, contends that there is compliance of Section 22N(2) and no interference is called for.

4. The Respondent No.2 is the private Respondent, who has been posted in place of the Applicant. He has been served with notice and was present on 27.11.2018. He preferred not to file reply.

5. Heard Shri S.S. Dere, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

6. Shri Dere, learned Advocate for the Applicant referred to minutes of PEB dated 17.10.2018 and pointed out that no reason whatsoever depicting public interest or administrative exigency is mentioned therein, and therefore, the transfer is ex-facie unsustainable in law. He referred to the Judgment of Hon'ble Bombay High Court in ***Writ Petition No.5465/2012 (Kishor S. Mhaske Vs. Maharashtra OBC Finance and Development Corporation) delivered on 7th March, 2013.***

7. Per contra, Smt. K.S. Gaikwad, learned Presenting Officer submitted that the transfer was necessitated on account of administrative exigencies and the same being approved by the Hon'be Chief Minister, interference is not warranted. She sought to place reliance on the Judgment of Hon'ble Bombay High Court in ***2007 (6) BOM CR 579 (Y.B. Gadekar, Deputy Engineer Vs. MHADA).*** The ratio of this authority is that, unless the orders of transfer are in conflict with the Rules and were made with ulterior motive or in patent arbitrary exercise of powers, the Court should decline to interfere in such matters, as the transfer is an incidence of service. The learned P.O. also placed reliance on the Judgment of this Tribunal of Full Bench in ***O.A.14 of 2018 (Damodar Mandalwar Vs. State of Maharashtra) decided on 9th March, 2018*** wherein transfer order has been upheld by the Tribunal. The learned P.O. placed reliance on Para No.10 of the Judgment which is as follows :

“10. *The Minutes of the meeting at P.B. page no.47 dated 05.01.2018 also shows that it was mentioned that the transfer of the Officers was in the interest of administration and there is no need to go into the merits as to whether the administrative exigency was in existence or not as it is for the competent authority to decide such exigency.”*

8. In view of submission advanced at the Bar, the crux of the matter is whether transfer order is in consonance with the provisions contained in Section 22 N of Maharashtra Police Act. Admittedly, the Applicant has not completed his normal tenure at Raigad and this is mid-term as well as mid-tenure transfer.

9. Here, it would be appropriate to reproduce Section 22N, which is 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:-

- (a) for Police Personnel of and above the rank of Deputy Superintendent of Police or Assistant Commissioner of Police a normal tenure shall be of two years at one place of posting;
- (b) for Police Constabulary a normal tenure shall be of five years at one place of posting;
- (c) for Police Officers of the rank of Police Sub-Inspector, Assistant Police Inspector and Police Inspector a normal tenure shall be of two years at a Police Station or Branch, four years in a District and eight years in a Range, however, for the Local Crime Branch and Special Branch in a District and the Crime Branch and Special Branch in a Commissionerate, a normal tenure shall be of three years;
- (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;
- (e) for Police Officers of the rank of Police Sub-Inspector, Assistant Police Inspector and Police Inspector in Specialized Agencies a normal tenure shall be of three years.]

The Competent Authority for the general transfer shall be as follows, namely:-

Police Personnel	Competent Authority
(a) Officers of the Indian Police Chief Minister

Service.

- | | | | |
|-----|---|------|---|
| (b) | Maharashtra Police Service Officers of and above the rank of Deputy Superintendent of Police. | | Home Minister |
| (c) | Officers up to Police Inspector | | (a) Police Establishment Board No.2.
(b) Police Establishment Board at Range Level
(c) Police Establishment Board at Commissionerate Level.
[(d) Police Establishment Board at District Level
(e) Police Establishment Board at the Level of Specialized Agency]: |

Provided that, the State Government may transfer any Police Personnel prior to the completion of his normal tenure, if,-

- (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.

(2) In addition to the grounds mentioned in sub-section (1), in exceptional cases, in public interest and on account of administrative exigencies, the Competent Authority shall make mid-term transfer of any Police Personnel of the Police Force.”

As per Section 2(6A), “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].

Whereas, as per Section 2(6B) "Mid-term Transfer" means transfer of a Police Personnel in the Police Force other than the General Transfer.

10. In the present case, the PEB No.1 constituted under Section 22(C) of Maharashtra Police Act recommended for the transfer of the Applicant. Admittedly, the Applicant has not completed normal tenure contemplated under Section 22 N, and therefore, it being the case of mid-term as well as mid-tenure transfer where there has to be compliance of Section 22N (2) of Maharashtra Police Act.

10. Here, it would be apposite to reproduce the context of the minutes of PEB to appreciate whether the impugned order is in compliance of Section 22N(2) of Maharashtra Police Act. The PEB recorded its minutes in one line which is as under :

"Police Establishment Board-1 has recommended following transfers / postings of Dy. Supdts. of Police / Asst. Comms. of Police on administrative grounds."

Thereafter, the file was placed by Home Department before the Hon'ble Minister with Chart giving details of the transfers of 22 Police Officials. There is note vide Paras 3 and 4 below Chart. The Applicant's name was figured at Serial No.18 in the Chart. The details concerning to him is recorded as under :

१८	श्री. अमोल विकास गायकवाड	उपविभागीय पोलीस अधिकारी, रोहा उपविभाग, रायगड (दि.२२.५.२०१७)	उपविभागीय पोलीस अधिकारी, वसमत उपविभाग, हिंगोली	सदर पदावर श्री. शशीकिरण कासिद दि. २०.८.२०१६ पासून कार्यरत असून, त्यांची श्री. अमोल गायकवाड कार्यरत असलेल्या पदावर बदलीने पदस्थापनेबाबतची शिफारस पोलीस आस्थापना मंडळ क्र. १ यांनी केली आहे. सदरहु शिफारस मान्यतेस्तव सादर करण्यात येत आहे.
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"३. प्रस्तुत प्रकरणी नमूद करण्यात येते की, उपरोक्त तक्त्यातील अ.क्र.५,८, आणि ९ येथील अधिका-यांना सामान्य प्रशासन विभागाच्या दि.२८.४.२०१५ आणि दि.१५.६.२०१७ रोजीच्या अधिसूचनेमधील तरतुदीनुसार महसुली विभागीय संवर्ग वाटप करून, पदोन्नतीने पदस्थापना देण्यात आली

आहे. सामान्य प्रशासन विभागाच्या दि. २८.४.२०१५ आणि दि. १५.६.२०१७ रोजीच्या अधिसूचनेनुसार पदेन्नतीने गट “अ” संवर्गात नियुक्त झालेल्या अधिका-यांनी त्या महसुली विभागात किमान तीन वर्षे इतका सेवा कालावधी पूर्ण करणे आवश्यक आहे.

४. महाराष्ट्र पोलीस -सुधारणा- अधिनियम, २०१४ च्या कलम २२(न)(२) च्या तरतुदीनुसार पोलीस अधीक्षक/ पोलीस उप आयुक्त आणि पोलीस उप अधीक्षक/ सहायक पोलीस आयुक्त पदावरील पोलीस अधिका-यांचा एका पदावरील सर्वसाधारण पदावधी दोन वर्षे एवढा आहे. कलम २२(न)(२)च्या तरतुदीनुसार जनहितार्थ व प्रशासकीय कारणास्तव सर्वसाधारण पदावधी पूर्ण होण्यापूर्वी बदली करण्याचे अधिकार सक्षम प्राधिका-यास आहेत. कलम २२(न)(२) च्या परंतुकाच्या तरतुदीनुसार कायदा व सुव्यवस्थेच्या कारणास्तव सर्वसाधारण पदावधी पूर्ण होण्यापूर्वी बदली करण्याचे अधिकार सर्वोच्च सक्षम प्राधिका-यास आहेत. राज्य पोलीस सेवा तसेच, भारतीय पोलीस सेवेतील पोलीस उप अधीक्षक व त्यावरील सर्व पदांसाठी सक्षम प्राधिकारी तसेच, सर्वोच्च प्राधिकारी मा मुख्यमंत्री (गृह) हे सक्षम प्राधिकारी तसेच सर्वोच्च सक्षम प्राधिकारी आहेत. सबब पोलीस आस्थापना मंडळ क्र.१ यांच्या पृ.१-३/प.वि. येथील शिफारशी शासन मान्यतेस्तव सविनय सादर करण्यात येत आहे.”

Interestingly, below Para No.4, the Deputy Secretary puts his note as below:

“अ.क्र.७, १८, २१ वरील अधिका-यांच्या त्या पदावरील कालावधी दोन वर्षे पूर्ण झालेला नाही, ही बाब सविनय निदर्शनास आणून देण्यात येत आहे.

सही/-
२०/१०/१८”

The matter was then placed before Hon’ble Chief Minister being competent authority and got approved.

11. Thus, what transpires from PEB minutes as well as the file noting placed before the Hon’ble Chief Minister that except one line sentence that “transfers are recommended on administrative ground”, there is absolutely no whisper about the reasons or necessities to spelt out or at least to infer what was the exact ground for the transfer of the present Applicant. Section 22N(2) empowers the competent authority to issue mid-term as well as mid-tenure transfer in exceptional cases, in public interest and on account of administrative exigency. Therefore, there has to be strict compliance of this provision and the reasons or the grounds are required to be noted. It is not mere formality but the requirement of the law. Therefore, the mere expression of word “administrative ground” by PEB Committee without specifying the reason or necessity can hardly be accepted in law.

12. Furthermore, while placing the file before Hon'ble Chief Minister, in Para Nos.3 and 4 also, there is nothing to indicate how the impugned transfer of the Applicant was necessitated for administrative ground. On the contrary, the perusal of Para Nos.3 and 4 reveals that the concerned authority only feels that, as they are empowered to do so, they are doing so. Only because the competent authority is empowered to do so, does not mean that they are free to do so as per their whims. As I stated above, the Respondents were required to make out special case in public interest and of administrative exigency. However, there is absolutely no whisper to comply the same. In absence of any such application of mind, the bear expression of word "administrative ground" can hardly be termed compliance of law. If there is no compliance, then it smacks of arbitrariness or some ulterior motive.

13. In the present case, despite the specific note or specific endorsement made by Deputy Secretary below Para Nos.3 & 4 that as the Applicant has not completed normal tenure of 2 years, it was not at all dealt with rather completely ignored.

14. It is obvious from the minutes of PEB that, in the place of Applicant, the Respondent No.2 was posted though the Applicant has not completed his normal tenure. It is, therefore, clearly seen that the impugned transfer was made only to accommodate Respondent No.2. In other words, it is with that ulterior motive, the Applicant has been displaced.

15. At this juncture, it would be apposite to mention here that the amendments in Maharashtra Police Act were made in 2015 in pursuance of the Judgment of Hon'ble Supreme Court in ***Prakash Singh and others Vs. Union of India and others (2006) 8 SCC 1*** to ensure that the Police Personnel / Officer should get fixed tenure as a normal tenure so that they should discharge their duties without fear or favour and transfer should not be made by the executive

as per their whims or desire. It is with this object, the specific provision in the form of Section 22N was incorporated in Maharashtra Police Act. If such mid-term transfers without assigning any reason are allowed to stand on mere expression of administrative ground, then it would defeat the very purpose of the amendments made in Maharashtra Police Act in deference to the recommendation of Hon'ble Supreme Court in **Prakash Singh's** case (cited supra).

16. The learned Advocate for the Applicant rightly referred to the Judgment of Hon'ble High Court in **Kishor Mhaske's** case (cited supra) though it is under the provisions of Transfer Act, 2005, the principle is applicable. Para No.7 of the Judgment is material which is as follows :

"7. We are satisfied in the case in hand that there was non-observance of the statutory requirements of the Act. The mid-term or pre-mature special transfer has to be strictly according to law, by a reasoned order in writing and after the due and prior approval from the competent transferring authority concerned for effecting such special transfer under the Act. The exercise of exceptional statutory power has to be transparent, reasonable and rational to serve objectives of the Act, as far as possible, in public interest. Mandatory requirements of the provision under Section 4(5) of the Act cannot be ignored or bye-passed. The exceptional reasons for the special mid-term or pre-mature transfer ought to have been stated in writing. Vague, hazy and meager expression such as "on administrative ground" cannot be a compliance to be considered apt and judicious enough in the face of mandatory statutory requirements. The impugned order of the transfer. In the absence of mention of special and exceptional reasons was passed obviously in breach of the statutory obligations and suffers from the vices as above. Impugned order dated 30.05.2012 would ex facie indicate that merely because of request made by the respondent no 3 Shri Murar, the Petitioner was sought to be transferred pre-maturely to Raigad. It is therefore unsustainable for want of evenhandedness or fairness to the Petitioner Government employee concerned and we therefore quash and set aside the impugned order of transfer. This order will not preclude the respondent no.1 passing a fresh reasoned order in writing, of course as prescribed under the Act after prior approval order is obtained from the competent transferring authority and by following the mandatory requirements as prescribed under the Act. The Petition is allowed in above terms. Hence, order :-

Rule is made absolute accordingly. Cost of this Petition quantified at Rs.7500/- shall be paid by the respondent no.1, to the Petitioner."

In Transfer Act, 2005 also, the normal tenure is provided and in special case, after recording the reasons in writing with the permission of competent authority, the transfer is permissible. The Hon'ble Bombay High Court held that, mere use of word "administrative ground" cannot be said compliance of the law. As such, the ratio of the authority is that the reasons for the transfer are need to be recorded to satisfy the Court whether it is in compliance of the provisions of law. This ratio is also attracted in the present case, as there is absolutely no whisper that the transfer of the Applicant was necessitated for the reasons to be mentioned and it is exceptional case and public interest as well as administrative exigency warrants the same.

17. The learned P.O. referred to **Gadekar's** Judgment (cited supra). In fact, the Hon'ble High Court held that unless the orders of transfers are in contrary with the Rules are made for ulterior motive or in patent arbitrary exercise of powers, the Court would decline to interfere in such matters. These observations rather help the Applicant, as in the present case, the motive to accommodate Respondent No.2 in the place of Applicant is clearly spelt out. As such, on the basis of these observations itself, the impugned order is not sustainable in law.

18. The learned P.O. also referred to the Judgment in **Damodar Mandalwar's** case (cited supra). In that case, the Tribunal observed that there is no mala-fides in impugned transfer and secondly, in meeting the Applicant concede to his transfer, but later on turned around and challenged the transfer. Therefore, in fact situation, the order of transfer in absence of *malafides* was upheld. Whereas in the present case, the motive to accommodate Respondent No.2 is clearly visible. Therefore, this Judgment is of no help to the Respondents.

19. The learned P.O. lastly made reference to the Judgment of Hon'ble Supreme Court in ***Civil Appeal No.5550 of 2009 (Airports Authority of India Vs. Rajeev Ratan Pandey & Ors.) decided on 17.08.2009***. In that case, there was no contravention of transfer policy, but it was stayed by the Hon'ble High Court. It is in that context, the Hon'ble Supreme Court allowed the appeal filed by the employer. As such, the facts are totally distinguishable, and therefore, this authority is of little assistance to the Respondents.

20. The necessary corollary of aforesaid discussion leads me to sum-up that the impugned order does not meet the mandatory requirement of Section 22N(2) of the Maharashtra Police Act, and therefore, it is not sustainable in law and facts. Therefore, I pass the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned order dated 29th October, 2018 qua the Applicant is quashed and set aside.
- (C) The Applicant be reinstated in his original posting within one month.
- (D) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 10.01.2019

Dictation taken by :

S.K. Wamanse.