

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.987 OF 2022

DISTRICT : NASHIK

Sub.:- Transfer/Repatriation

Shri Akshay Dilip Nathe.)
Age : 29 Yrs, Occu.: Police Constable at)
Police Headquarter, Nashik Rural.)
R/at : Gajanandan Row House,)
Siddheshwar Nagar, Hirawadi, Panchwati,)
District : Nashik.)...**Applicant**

Versus

1. The Additional Director General of)
Police [Traffic], M.S, Colaba, Mumbai.)
2. The Superintendent of Police,)
Nashik Rural, Nashik.)...**Respondents**

Mr. K.R. Jagdale, Advocate for Applicant.

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

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 10.04.2023

JUDGMENT

1. The Applicant has challenged the order dated 28.06.2021 issued by Respondent No.1 – Additional Director General of Police [Traffic], M.S, Mumbai thereby repatriating him to his parent department on the establishment of Respondent No.2 – Superintendent of Police, Nashik Rural, invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

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

The Applicant was serving in the cadre of Police Constable on the establishment of Respondent No.2 – Superintendent of Police, Nashik Rural. The Respondent No.2 deputed the Applicant in Highway Police on the establishment of Respondent No.1 for five years as a temporary deputation for five years by order dated 10.01.2019. Accordingly, Applicant joined on the establishment of Respondent No.1. In terms of order dated 10.01.2019, he claims to be entitled for deputation of five years. However, abruptly, Respondent No.1 by order dated 28.06.2021 repatriated him to his parent department on the ground of default. The Applicant has challenged the order dated 28.06.2021 in the present O.A. *inter-alia* contending that he is repatriated mid-term and mid-tenure and it amounts to punishment and unsustainable in law.

3. The Respondents resisted the O.A. by filing Affidavit-in-reply *inter-alia* contending that though deputation was for five years, it was purely temporary and it does not vest any right much less legally enforceable to continue on deputation for five years. That apart, in view of default reports received against the Applicant, the Police Establishment Board (PEB) at Highway Police level unanimously recommended to repatriate him to his parent department as administrative exigency and to maintain discipline in the Department.

4. Shri K.R. Jagdale, learned Advocate for the Applicant sought to assail the impugned order *inter-alia* contending that since deputation was for five years, the order of repatriation is unsustainable in law and secondly, it being on alleged default report, it amounts to punishment and unsustainable in law. In this behalf, he placed reliance on **AIR 2009 SC 1399 [Somesh Tiwari Vs. Union of India]**.

5. Per contra, Smt. K.S. Gaikwad, learned Presenting Officer sought to justify the impugned order dated 28.06.2021 and has pointed out that in view of default report attributing serious misconduct and negligence in performance in duties, Applicant's continuation in Highway Police found

not conducive and accordingly, PEB unanimously recommended for his transfer. She has further pointed out that show cause notices were also issued to the Applicant and in reply, he admits his lapses. On this line of submission, she urged that the challenge to the impugned transfer order is devoid of law and O.A. is liable to be dismissed.

6. In view of submissions advanced at the Bar, the issue posed for consideration is whether impugned order dated 28.06.2021 needs any interference in the limited jurisdiction of judicial review in transfer matters and in my considered opinion, the answer is in emphatic negative.

7. At the very outset, needless to mention that transfer being an incidence of Government service, it is always done in administrative exigencies and no Government servants have vested right much less legally enforceable to stay at one place for particular time. However, at the same time, now transfers of Police Personnel are being governed by Maharashtra Police Act and it is not left to the whims and caprice of the executive. The Maharashtra Police Act, particularly Section 22N-2 empowers competent authority [PEB in present case] to transfer Police Personnel mid-term or mid-tenure where administrative exigencies warrant so.

8. Though in terms of Section 22N-1(b) of Maharashtra Police Act, the normal tenure of Police Constabulary shall be five years at one post of posting. In the present case, admittedly, Applicant's parent department is Superintendent of Police, Nashik Rural and by order dated 10.01.2019, he was deputed for five years, but with specific stipulation that it is temporary deputation. Thus, where deputation is temporary, the Applicant do not have legally vested right to continue on deputation for five years. That apart, where transfer is necessitated on account of misconduct or negligence in performance of duties, the PEB is competent to transfer and repatriate the Police Personnel to his parent department.

9. The perusal of record reveals that Shri Amol S. Walzhade, Incharge of Traffic Police Centre, Ghoti had forwarded default report dated 15.06.2021 attributing serious misconduct and lapses to the Applicant and recommended for his repatriation to the parent department. In default report, it is stated that on 10.02.2021, there was accident in Kasara Ghat Section and Applicant was deputed to remain present at the place of accident to divert the traffic, but when his senior visited the place of accident, the Applicant was found simply sitting in private vehicle. Secondly, on 15.06.2021, he resumed duty without following protocol and without using HSP Band and black shoes. When questioned, he behaved arrogantly with the senior and thereby undermined his authority and acted in derogation of discipline of the Department. He was given show cause notices to which he had submitted reply, which is at Page Nos.48 and 49 of Paper Book, in which he apologies for the mistake and undertook to mend his ways. It is on this background, the PEB in its meeting dated 22.06.2021 unanimously recommended to repatriate the Applicant to his parent department. The minutes of PEB are as under :-

“पोलीस अधीक्षक, नाशिक ग्रामीण यांचे आस्थापनेवरून म.पो.केंद्र घोटी येथे प्रतिनियुक्तीवर कार्यरत असलेले पोशि.३५९/अक्षय दिलीप नाठे, यांनी दिनांक १७/०९/२०१९ रोजी कर्तव्यास असताना प्रभारी अधिकारी यांचे नवीन खुर्चीस टोकदार वस्तुने छिद्र पाडलेले होते. दिनांक १०/०२/२०१९ रोजी जुन्या कसारा घाटात जव्हार फाटा जवळ मालट्रक खोल दरीत जाऊन अपघात झालेला होता. सदर मालट्रक काढणेकरिता वाहतूक नवीन कसारा घाटातून वळवण्यात आली होती. वाहतुकीचे नियमन करण्याकरिता पोशि.३५९/अक्षय नाठे यांची नेमणूक करण्यात आली होती. सदर अपघात स्थळाला प्रभारी अधिकारी यांनी भेट दिली असता सदर ठिकाणी पोशि.३५९/नाठे हजर न राहता खाजगी वाहनात बसून असल्याचे मिळून आले.

प्रभारी अधिकारी म.पो.केंद्र घोटी यांनी सर्व पोलीस अंमलदार यांना वेळोवेळी संदेश देऊन सुद्धा दिनांक १५/०६/२०२१ रोजी कर्तव्यावर असताना पोशि.३५९/नाठे यांनी दाढी न करता तसेच HSP बँड न लावता व युनिफॉर्मवर काळे बुटाचा वापर केला नाही. सदरबाबत त्यांना सफौ.एक.के. डांगळे, सफौ. एम.के. पवार, सफौ. एस.डी. पाटील, पोहवा.७६२/एस.डी. खताळ, पोना.११९४/एन.डी. दराडे, पोना.२४४३/एस.आर. नंदन, चापोना.१४१/जे.व्ही. जाधव, पोशि.२५६६/एस.यु. माळोदे, पोशि.२०५८/अ.डी. माळी या सर्व अंमलदारांसमोर विचारले असता पोशि.३५९/अक्षय नाठे यांनी सांगितले की, यापूर्वी सपोनि. लोखंडे यांचे गाडीच्या नळ्या कापल्या होत्या त्यावरही काही झाले नाही. प्रभारी अधिकारी यांचे खुर्चीस छिद्र पाडले तेव्हाही काही झाले नाही. आता काय होणार, असे बोलून प्रभारी अधिकारी यांचा सर्वासमक्ष अवमान करून शिस्तप्रिय पोलीस खात्यात अशोभनीय असे वर्तन केलेले आहे. पोशि.३५९/यांचेवर योग्य ती कायदेशीर कारवाई न झाल्यास इतर अंमलदार हे देखील अशा प्रकारचे कृत्य करतील.

तरी पोशि.३५९/अक्षय दिलीप नाठे यांचे वर कारवाई होणेस व त्यांना त्यांचे मूळ घटकात प्रत्यावर्तीत करणेबाबत पोलीस अधीक्षक, महामार्ग पोलीस ठाणे परिक्षेत्र यांनी शिफारस केलेली आहे.”

10. As stated above, in Section 22N-2 of Maharashtra Police Act, the PEB is empowered to transfer Police Personnel mid-term and mid-tenure

before completion of tenure in public interest and on account of administrative exigencies. In the present case, the PEB constituted at Highway Police level headed by Additional Director General of Police having regard to misconduct and lapses in performance of duties unanimously resolved to transfer or repatriate the Applicant to his parent department. As such, there is objective assessment of the situation by the competent authority and once test of objectivity is satisfied, the subjectivity of satisfaction cannot be examined by the Tribunal. It is for the competent authority to find out the solution and where continuation of the Applicant was found not conducive and transfer was necessitated to maintain decorum and discipline in the department, such a decision can hardly be interdicted by the Tribunal. In this behalf, Hon'ble Supreme Court in **(2004) 4 SCC 245 (Union of India & Ors. Vs. Shri Janardhan Debanath & Anr.) decided on 13.02.2004** in Para No.14 held as under :-

“14. The allegations made against the respondents are of serious nature, and the conduct attributed is certainly unbecoming. Whether there was any mis-behaviour is a question which can be gone into in a departmental proceeding. For the purposes of effecting a transfer, the question of holding an enquiry to find out whether there was mis-behaviour or conduct unbecoming of an employee is unnecessary and what is needed is the prima facie satisfaction of the authority concerned on the contemporary reports about the occurrence complained of and if the requirement, as submitted by learned counsel for the respondents, of holding an elaborate enquiry is to be insisted upon the very purpose of transferring an employee in public interest or exigencies of administration to enforce decorum and ensure probity would get frustrated. The question whether respondents could be transferred to a different division is a matter for the employer to consider depending upon the administrative necessities and the extent of solution for the problems faced by the administration. It is not for this Court to direct one way or the other. The judgment of the High Court is clearly indefensible and is set aside. The Writ Petitions filed before the High Court deserve to be dismissed which we direct. The appeals are allowed with no order as to costs.”

The principles laid down by Hon'ble Supreme Court in **Janardhan Debanath's** case are squarely attracted to the present case.

11. Reliance placed by Shri Jagdale, learned Advocate on the decision of **Somesh Tiwari's** case (cited supra) is totally misplaced. In that case,

there was transfer on anonymous complaint which subsequently found untrue. It is in that context in fact situation, the Hon'ble Supreme Court held that the order of transfer was passed on material which was not in existence and therefore, it suffers from non-application of mind and also suffers from malice in law. Whereas in the present case, the Applicant was transferred in view of default report attributing serious lapses in performance of duties. The question of malice, therefore, does not survive. The Applicant also admits the lapses in his reply to show cause notice. Suffice to say, it is a case of *bonafide* exercise of powers under Maharashtra Police Act.

12. The totality of aforesaid discussion leads me to sum-up that the challenge to the transfer order dated 28.06.2021 is totally devoid of merit and O.A. is liable to be dismissed. Hence, the order.

ORDER

The Original Application is dismissed with no order as to costs.

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

Mumbai
Date : 10.04.2023
Dictation taken by :
S.K. Wamanse.

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