MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI BENCH AT AURANGABAD

ORIGINAL APPLICATION NO.616 OF 2021

(Subject:-Transfer)

DISTRICT: - Dhule.

Shri Mayus Lahu Sonawane ,)
Age : 39 years, Occ.: Service as Police Naik,)
R/o : Police Head Quarter, Building No.21,)
Room No.1, Dhule, Tq. and District Dhule.)
Cell No.9923089939)...**APPLICANT**

V E R S U S

1. **The State of Maharashtra**)
Through its Secretary,)
Home Department,)
Mantralaya, Mumbai-32.)

2. **The Superintendent of Police,**)
Dhule, District Dhule.)

3. **The Deputy Superintendent of Police**)
(Head Quarter),)
Dhule, District Dhule.)

4. **The Police Inspector,**)
Local Crime Branch, Dhule,)
District Dhule.)

5. **The Police Inspector,**)
Head Quarter, Dhule, District Dhule)..**RESPONDENTS**

APPEARANCE **:** Shri Yogesh B. Bolkar, learned Advocate for the applicant.

: Smt. Deepali S. Deshpande, learned Presenting Officer for the respondents.

CORAM : SHRI V.D. DONGRE, MEMBER (J)

DATE : 21.10.2022

O R D E R

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, this Original Application is made challenging the impugned transfer order of the applicant dated 31.08.2021 (Annex. 'A-11') issued by the respondent No.2 i.e. the Superintendent of Police, Dhule, District-Dhule, whereby the applicant was transferred from his regular posting of Local Crime Branch Dhule to Police Head Quarter, Dhule on default report.

2. The facts in brief giving rise to this Original Application can be stated as follows:-

(i) The applicant is working in police department holding the post of Police Naik. By order dated 22.05.2017 (part of Annex. 'A-1' collectively) issued by the respondent No.2, the applicant was regularly posted at Local Crime Branch, Dhule. Thereafter, the respondent No.4 i.e. the Police Inspector, Local Crime Branch, Dhule, District-Dhule by order dated

27.07.2020 (Annex. 'A-2') posted the applicant at Dhule City Police Station more particularly for undertaking the raids within the jurisdictions of the Police Station as illegal activities were growing there. While discharging his duties at the said police station, upon receipt of the secret information being instructed by the Police Inspector (P.I.) about gambling at public place near Baudh Vihar in Fule Nagar of Dhule City, the applicant and his colleague Police Naik Nitin Anandrao Mohane raided the spot of gambling. The persons indulging in the gambling were fled away. They chased those persons. They recovered the seized amount of gambling of Rs.770/- from the owner of the gambling place. F.I.R. bearing C.R .No. 196/2020 was registered against the said accused. The accused was taken into the custody. Panchanama was drawn. The statements of the applicant and his colleague Nitin Anandrao Mohane were recorded.

(ii) In respect of investigation of the said crime, however, the respondent No.4 i.e. the Police Inspector, Local Crime Branch, Dhule issued office order dated 19.09.2020 (Annex. 'A-4') against the applicant, his colleague Police Naik Nitin Anandrao Mohane and Chetan Kankhare, who registered F.I.R. alleging that in the said raid though the amount of

Rs.7,770/- was seized, seizer of only part amount of Rs.770/- was shown illegally and there was allegation of demand of illegal gratification in the name of higher officers.

(iii) The applicant submitted his reply dated 21.01.2021 (part of Annex. 'A-5' collectively) denying the said allegations and contending that he is discharging his duties honestly. owever, the respondent No.4, thereafter prepared default report dated 23.09.2020 (Annex. 'A-6') against the applicant and his colleague Police Naik Nitin Anandrao Mohane. In view of that default report dated 23.09.2020 (Annex. 'A-6'), the respondent No.2 i.e. the Superintendent of Police, Dhule temporarily posted the applicant and his colleague Nitin Anandrao Mohane at Police Head Quarter, Dhule vide order dated 24.09.2020 (Annex. 'A-7').

(iv) Thereafter, show cause notice dated 25.09.2020 (Annex. 'A-8') was issued by the respondent No.2 to the applicant and his colleague Nitin Anandrao Mohane as to why one yearly increment should not be withheld for their default in respect of investigation of C.R .No. 196/2020. The applicant submitted his reply dated 08.10.2020 (part of Annex. 'A-9' collectively) denying the allegations. The respondent No.2, thereafter passed punishment of Censure

vide order dated 19.10.2020 (Annex. 'A-10') against the applicant and his colleague Nitin Anandrao Mohane.

(v) In view of above, it is contended that regular posting of the applicant is at Local Crime Branch, Dhule. During pendency of the enquiry, the applicant was posted temporarily at Police Head Quarter, Dhule. After issuance of order of Censure dated 19.10.2020 (Annex. 'A-10'), the applicant has been transferred by impugned order dated 31.08.2021 (Annex. 'A-11'). In fact only order of Censure was issued as no material was found against the applicant. The accused in C.R .No. 196/2020 was convicted by order dated 17.09.2021 (Annex. 'A-12') and was sentenced to pay the fine of Rs.200/- and in default to suffer two days simple imprisonment as the accused pleaded guilty.

(vi) In such circumstances, impugned order of transfer of the applicant is issued mala-fide. It is issued after about one year of issuing Censure order. In view of the same, impugned transfer order of the applicant is punitive and mala-fide in nature and is not sustainable in the eyes of law. Therefore, the impugned transfer order of the applicant is liable to be quashed and set aside.

3. Affidavit-in-reply is filed on behalf of the respondent Nos.2 to 5 by one Vijay Krishnarao Jadhav working as the Deputy Superintendent of Police (EOW), Dhule, District Dhule, thereby he denied the adverse contentions raised in the Original Application. It is contended that the impugned transfer order of the applicant is legal and proper and is free of any mala-fide, vindictiveness and not in violation of any statutory rules. The impugned transfer order is issued in accordance with the G.R. dated 16.02.2015 and 06.04.2015 (Annex. 'R-1' collectively). The impugned transfer order is passed in view of default report dated 23.09.2020 (Annex. 'A-6') issued by the respondent No.4 after enquiry in the allegations. The applicant was given opportunity for defending him in respect of the default committed by him and order of Censure was issued against the applicant. The impugned order of transfer, therefore, is legal and proper and the Original Application is liable to be dismissed.

4. Affidavit-in-rejoinder is filed by the applicant denying the adverse contentions raised in the affidavit-in-reply and reiterating the contents of the Original Application.

5. I have heard at length the arguments advanced by Shri Yogesh B. Bolkar, learned Advocate for the applicant on

one hand and Smt. Deepali S. Deshpande, learned Presenting Officer representing the respondents on other hand.

6. Learned Advocate for the applicant while assailing the impugned order of transfer submitted that the impugned order of transfer of the applicant is mid-tenure and mid-term and as such is not in compliance of the provisions of Section 22N(2) of Maharashtra Police Act in it's proper perspective. The ground of default report cannot be said to be established by merely mentioning of Section 22N(2) of Maharashtra Police Act and it does not comply with the conditions contemplated there by making out the ground of exceptional circumstances, public interest and administrative exigencies. In fact, the applicant has faced the punishment of Censure issued by the respondent No.2 dated 19.10.2020 (Annex. 'A-10') in respect of the alleged default. The impugned transfer order is issued after about 10 months on 31.08.2021 by the respondent No.2. In view of the same, it is punitive in nature and amounts to double jeopardy for the same default report. No case is made out for passing transfer order even as contemplated in paragraph No.8 of Government Circular dated 11.02.2015 issued by the G.A.D., Government of Maharashtra shunting away the applicant. The order suffers

from malice in law and punitive in nature which is impermissible and illegal as per the law laid down by the Hon'ble Apex Court in the matter of ***Somesh Tiwari Vs. Union of India report in (2009) 2 SCC 592***.

7. Par contra, learned P.O. for the respondents submitted that perusal of impugned order of transfer of the applicant would show that it is issued in concurrence of requisite Police Establishment Board as contemplated in Section 22N(2) of Maharashtra Police Act. Prima-facie the applicant was found at fault and order of Censure was issued against the applicant. That itself does not preclude issuing transfer order against the applicant. That is legal and proper and cannot be interfered into. The minutes of the requisite P.E.B. meeting to be held on 13.08.2021 is reflected in order dated 12.08.2021 (page No.66 of P.B.). Moreover, the impugned order of transfer is issued taking into consideration the G.R. dated 16.02.2015 and 06.04.2015 (Annex. 'R-1' collectively).

8. Perusal of the rival pleadings and submissions would show that the applicant is working on the post of Police Naik which comes under the expression "Constabulary" defined under Section 2(4A-1) of the Maharashtra Police Act, which

means Police Constable, Police Naik, Police Head Constable and Assistant Sub-Inspector. In view of the same, in terms of Section 22N(1) (b), the normal tenure of the Constabulary is of five years at one place of posting. The applicant came to be posted as Police Naik with Local Crime Branch as per order dated 22.05.2017 (Annex. 'A-1'). By order dated 27.07.2020 (Annex. 'A-2'), the applicant was given posting at Dhule City Police Station especially for undertaking the raids as the illegal activities were growing in the jurisdiction of the said police station.

9. The impugned order of transfer of the applicant is dated 31.08.2021 (Annex. 'A-11'). As per the said order, the applicant has been transferred from his regular posting at Local Crime Branch, Dhule to Police Head Quarter, Dhule more particularly in view of the default report dated 23.09.2020 (Annex. 'A-6') submitted by the respondent No.4 i.e. the Police Inspector, Local Crime Branch, Dhule to the respondent No.2 i.e. the Superintendent of Police, Dhule in respect of faulty investigation in C.R.No.196/2020 registered on 15.09.2020 under Section 12 (A) of Prevention of Gambling Act at Dhule City Police Station on the complaint lodged by the Police Naik Chetan Kankhare. The concerned raid was

conducted by the applicant and his colleague Police Naik Nitin Anandrao Mohane. It is alleged that either this applicant or Police Naik Mayus Lahu Sonwane ought to have become complainant but instead they made Police Naik Chetan Kankhare as complainant and the applicant and said Police Naik Nitin Anandrao Mohane were shown as witnesses. In the said raid, the applicant and his colleague in fact had seized the amount of Rs.7770/-, but falsely shown having recovered only amount of Rs.770/-.

10. The impugned transfer order of the applicant dated 31.08.2021 (Annex. 'A-11') is issued by the respondent No.2 i.e. the Superintendent of Police, Dhule who is the competent transferring authority. The respondents have produced on record the G.R. dated 13.08.2021 (page No.63 of P.B.) issued by the Home Department of Maharashtra State. As per the said G.R, due to prevailing Covid-19 pandemic situation, date of general transfer was extended upto 31.08.2021. The applicant has completed tenure of five years at Local Crime Branch, Dhule as he was posted there as per order dated 22.05.2017 (Annex. 'A-1'). As per order 27.07.2020 (Annex. 'A-2') issued by the respondent No.4, the services of the applicant were attached to Dhule City Police Station for

curbing the illegal activities. However, perusal of the impugned transfer order of the applicant dated 31.08.2021 (Annex. 'A-11') would show that it is not regular transfer order though issued on 31.08.2021 and though after completion of normal tenure of five years of the applicant.

11. In fact, the said impugned transfer order is issued under Section 22N(2) of Maharashtra Police Act, which deals with mid-term transfer order under exceptional circumstances, public interest and administrative exigencies. The reason behind the said order is of alleged default report as discussed earlier. In view of the fact that the impugned transfer order of the applicant dated 31.08.2021 (Annex. 'A-11') is being issued under Section 22N(2) of Maharashtra Police Act, the competent transferring authority for said transfer is Police Establishment Board at District Level. In view of that, the concurrence and approval of the said Police Establishment Board is necessary. In impugned transfer order there is mention of Police Establishment Board.

12. The respondents have placed on record the order dated 12.08.2021 (page No.66 of P.B.) issued by the respondent No.2 i.e. the Superintendent of Police, Dhule constituting the

said Police Establishm0ent Board at District Level for effecting transfers of the year 2021-2022 and holding meeting of the said board on 13.08.2021. Order of Police Establishment Board dated 31.08.2021 is produced by the respondents at page No.67 of P.B. There is mention of meeting of Police Establishment on 31.08.2021 in respect of consideration of the transfers. The said order, however, does not show the mind of the Police Establishment Board in coming to the conclusion of transferring the applicant in view of default report. As far as default report is concerned, what documents were placed before the Police Establishment Board is not known.

13. Perusal of the facts of the present case would show that before submitting the default report dated 23.09.2020 (Annex. 'A-6') by the respondent No.4 to respondent No.2, the respondent No.4 issued show cause notice dated 19.09.2020 (Annex. 'A-4') to the applicant in respect of C.R.No.196/2020 registered at Dhule City Police Station under Section 12(A) of Prevention of Grambling Act. The applicant submitted his reply dated 21.09.2020 (Annex. 'A-5') to it. Thereafter, the respondent No.2 issued show cause notice dated 25.09.2020 (Annex. 'A-8') to the applicant as to why one yearly increment

without cumulative effect should not be stopped for having committed illegal act as stated in default report of respondent No.4 dated 23.09.2020 (Annex. 'A-6'). The applicant submitted his reply dated 08.10.2020 (Annex. 'A-9'). Thereafter, by order dated 19.10.2020 (Annex. 'A-10'), the respondent imposed punishment of Censure upon the applicant. After about ten months thereafter, the impugned order of transfer of the applicant dated 31.08.2021 (Annex. 'A-11') came to be issued. Meanwhile, during enquiry, the applicant was temporarily posted at Police Head Quarter vide order dated 24.09.2020 (page No.69 of P.B.) issued by the office of the respondent No.2.

14. In view of that, the learned Advocate for the applicant has strenuously argued before me that the applicant was already punished in respect of default repot and as such, subsequent impugned transfer order of the applicant is punitive in nature and it is malice in law. He also submitted that the impugned order is also beyond the parameters laid down in paragraph no.8 of the Government Circular dated 11.02.2015 issued by the G.A.D., Maharashtra State in respect of transfer. Paragraph No.8 of the said Government Circular is as follows:-

"८. एखाद्या प्रकरणात ३ वर्षपेक्षा कमी कालावधी असलेल्या अधिकारी/कर्मचाऱ्याच्या विरोधात गैरवर्तणुकीच्या तक्रारी प्राप्त झालयास केवळ तक्रारीच्या आधारे संबंधीत अधिकारी/कर्मचाऱ्याची बदली करण्यात येऊ नये. अशा प्रकरणात संबंधीत अधिकारी/कर्मचाऱ्यांच्या तक्रारीसंबंधातील वस्तुस्थिती जाणून घेऊन (आवश्यक तेथे अहवाल मागवून) तक्रारीमधील गांभीर्य विचारात घेऊन, संबंधीत अधिकारी/कर्मचारी त्याच पदावर ठेवणे आवश्यक आहे किंवा कसे याबाबत बदली प्राधिकाऱ्याने ठोस निर्णय घ्यावा. संबंधीत अधिकारी/कर्मचाऱ्याच्या विरोधातील तक्रारीमध्ये तथ्य आढळून आल्यास संबंधीत अधिकारी/कर्मचाऱ्याला त्याच पदावर ठेवून त्याच्याविरूध्द शिस्तभंगाची कारवाई सुरू करण्याबाबत बदली प्राधिकाऱ्याने निर्णय घ्यावा. मात्र संबंधीत अधिकारी/कर्मचाऱ्याला त्याच पदावर ठेवणे योग्य नाही असे बदली प्राधिकाऱ्याचे मत झाल्यास त्याबाबतची कारणामिमांसा नमूद करून बदली प्राधिकारी संबंधीत अधिकारी/कर्मचाऱ्याची बदली त्याच्या लगतच्या वरिष्ठ प्राधिकाऱ्याकडे प्रस्तावित करू शकतो. लगतच्या वरिष्ठ प्राधिकाऱ्याकडे असा प्रस्तवा प्राप्त झाल्यास बदली प्राधिकाऱ्याने नमूद केलेली कारणे योग्य आहेत किंवा कसे याची छाननी करून स्वत:चे मत स्पष्ट करून बदली प्राधिकाऱ्याच्या प्रस्तावाला मान्यता द्यावी किंवा बदली प्राधिकाऱ्याचा प्रस्ताव फेटाळून लावण्यात यावा. ज्या प्रकरणात बदली प्राधिकाऱ्याच्या प्रस्तावानुसार गैरवर्तणुकीच्या अनुषंगाने शासकीय अधिकारी/कर्मचारी यांची बदली करण्यात येते अशा प्रकरणात संबंधीत अधिकारी/कर्मचारी यांची बदली केल्यानंतर त्याच्या विरूध्द शिस्तभंगाची कारवाई सुरू करण्याची दक्षता घ्यावी."

In view of paragraph No.8 as above, if the facts of the present case are considered, it does appear that the transfer order is punitive in parameters laid down therein.

15. Moreover, learned Advocate for the applicant has placed reliance on the citation of the Hon'ble Apex Court in the matter of ***Somesh Tiwari Vs. Union of India report in***

(2009) 2 SCC 592. In paragraph No.16 it is laid down as follows:-

> *"16. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two kinds - one malice in fact and the second malice in law. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal."*

16. Learned Advocate for the applicant further placed reliance on the decision of principal seat of this Tribunal at Mumbai dated 06.08.2021 commonly passed in O.A.Nos. 689 to 693 of 2020 with O.A.No.05/2021 in the matter of ***Ajay Mahadev Kharade Vs. The state of Maharashtra & Anr.*** and on the decision of this Tribunal dated 15.12.2021 passed in O.A.No.95 of 2021 in the matter of ***Nitin Surendra Shelar Vs. The State of Maharashtra & Ors***. In both the decisions, the impugned transfer orders issued under Section 22N(2) of Maharashtra Police Act were considered.

17. In the case in hand, the applicant is already punished of Censure for his alleged illegal role in C.R.No.196/2020 registered under Section 12(A) of Prevention of Grambling Act wherein it was alleged that the amount of Rs.7770/- was in fact seized involved in gambling activity, but seizer of only amount of Rs.770/- was shown. It is pertinent to note that in respect of the said crime, the accused who was arrested in the said crime pleaded guilty and was convicted for having committed offence punishable under Section 12(A) of Prevention of Grambling Act and was sentenced to pay the fine of Rs. 200/- in default to suffer simple imprisonment of two days. In view of the same, the issue of alleged faulty investigation of the said crime did not exist and came to an end. It is true that the transfer is an incident of service and the Court should not interfere in such transfer order ordinarily. But in the case in hand, the impugned order does not satisfy the test as laid down in paragraph No.8 of Government Circular dated 11.02.2015 issued by the G.A.D., Maharashtra State. Moreover, in respect of alleged default report, the applicant has been punished with the order of Censure about ten months before passing of the impugned transfer order dated 31.08.2021 (Annex. 'A-11'). It appears

that though the applicant had completed normal tenure of five years, he was not in the zone of consideration for general transfer to be effected on 31.08.2021 on the basis of seniority. The respondents themselves submitted the transfer order of the applicant dated 31.08.2021 (Annex. 'A-11') is mid-term transfer order issued by complying the procedure of Section 22N (2) of Maharashtra Police Act. However, considering the facts of the case, the impugned order of transfer of the applicant appears to be mala-fide and punitive in nature and is double jeopardy as the applicant is already punished with the order of Censure. In view of the same, the impugned order of transfer of the applicant is sustainable in the eyes of law and is liable to be quashed and set aside. Therefore, I proceed to pass the following order.

O R D E R

The Original Application is allowed in following order:-

(A) The impugned transfer order of the applicant dated 31.08.2021 (Annex. 'A-11') issued by the respondent No.2 is hereby quashed and set aside.

(B) The respondents are directed to repost the applicant at his earlier place of posting at Local

Crime Branch, Dhule within the period of one month from the date of this order.

(C) No order as to costs.

(V.D. DONGRE)
MEMBER (J)

Place:-Aurangabad
Date : 21.10.2022
SAS O.A.616/2019