

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 1039 / 2022 (S.B.)

Santosh Manohar Mahalle,
Aged about 53 years,
Occ. Service (Police Inspector),
R/o Gurukul Nagari, Akola,
Tah. and District Akola.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Additional Chief Secretary,
Department of Home,
Mantralaya, Mumbai- 32.
- 2) The Director General of Police (M.S.),
Near Regal Cinema, Mumbai.
- 3) The Deputy Inspector General of Police,
Amravati Region, Amravati.
- 4) The Superintendent of Police,
Akola Tah. and Dist. Akola.

Respondents

Shri S.N.Gaikwad, Id. Advocate for the applicant.

Shri S.A.Deo, Id. C.P.O. for the Respondents.

Coram :- Hon'ble Shri M.A.Lovekar, Member (J).

JUDGMENT

Judgment is reserved on 05th Dec., 2022.

Judgment is pronounced on 12th Dec., 2022.

Heard Shri S.N.Gaikwad, ld. counsel for the applicant and Shri S.A.Deo, ld. C.P.O. for the Respondents.

2. Case of the applicant is as follows. The applicant is holding the post of Police Inspector. By order dated 20.08.2021 (A-1) he was transferred from Akot City Police Station to local Crime Branch, Akola where he joined. His satisfactory performance was duly recognised by issuing to him letters of appreciation (A-2 collectively). On 10.10.2022 respondent no. 2 issued the impugned order transferring him from Local Crime Branch, Akola to Yavatmal District on a non-executive post. This mid-term order was purportedly passed under Section 22N(2) of the Maharashtra Police Act (hereinafter referred as 'The Act'), neither exceptional circumstances, public interest nor administrative exigency was involved. Daughter of the applicant is in 10 std. (A-4). His wife is a Lecturer in Junior College (A-5). Hence, mid-term transfer will cause immense hardship to his family. The impugned order is malafide. It deserves to be quashed and set aside.

3. In his reply at pp. 24 to 45 respondent 3 has averred as follows. As many as five default reports were received against the applicant. He was instructed by his superiors to keep watch on and to take effective steps to curb activities of gambling and sale of gutka in his jurisdiction. He disregarded these instructions failed to perform his duty and Special Squad had to effect raids on gambling dens and gutka joints. During these

raids cash and muddemal in huge quantity were seized. This was the first default (A-R-1). During another raid gutka and other muddemal worth Rs. 43,28,000/- were seized. This, too, indicated laxity of the applicant and his total disregard for instructions given by his superiors. This was the second default (A-R-2). One Shyam Verma had filed a private complaint against some policemen who were attached to Local Crime Branch, Akola. In this private complaint J.M.F.C., Akola directed registration of F.I.R. under section 156(3), C.R.P.C. against the persons named as accused in the private complaint (A-R-3). Regarding one incident of firing by Police at Laxminagar, Amravati, preliminary inquiry was conducted. The report of said inquiry (A-R-4) concluded as follows:-

“या करिता पोलिस अधिक्षक अकोला श्री जी श्रीधर यांचे पर्यवेक्षणाचा अभाव दिसुन येतो तसेच सदरहू कार्यवाही करतांना घटक प्रमुख म्हणून आवश्यक त्या मार्गदर्शक सुचना तसेच कायदेशिर बाबीचे अवलंब जाणीवपूर्वक केले नसल्याचे दिसुन येते व घटना घडल्यानंतर बचावाकरिता मागील तारखेमध्ये आदेश तयार करणे अशा प्रकारे सदर कृत्यास सहकार्य केल्याचे दिसुन येते. पोलिस निरीक्षक स्था. गु. शाखा अकोला संतोष महल्ले यांचा सुध्दा अधिनस्थ पाठविलेल्या पथका सोबत कोणताही संपर्क वा मार्गदर्शन नसल्याचे स्पष्ट होते व आवश्यक नसतांना फक्त अशा प्रकारचे लोक जे पोलिसांचे विरुद्ध जातात त्यांचे मध्ये दहशत निर्माण करणे कामी गोळीबार करण्यात आल्याबाबत पोलिस पथक प्रमुख सपोनि गोपाल ढोले हे प्रथमदर्शनी जबाबदार असल्याचे चौकशीत दिसुन येत आहे. एकंदरीत पोलिस अधिक्षक अकोला व पोलिस निरीक्षक स्था. गु. शाखा अकोला तसेच आरोपीस अटक कारवाई करण्याकरिता आलेले पथकातील अधिकारी व कर्मचारी हे या नियोजनबद्ध कटकारस्थानात सहभागी असल्याचे व त्यांची या कार्यवाही संबंधाने केलेली कृती ही पोलिस दलाची प्रतिमा मलीन करणारी असल्याचे दिसुन येते.

तरी सदरहू प्रकरणात कसुरदार याचे विरुद्ध विभागीय चौकशी करण्यांत यावी तसेच कठोर शिक्षा होणेस शिफारस आहे.”

The Police Establishment Board at the range level was constituted consisting of (1) Deputy Inspector General of Police as a Chairman, (2) Superintendent of Police, Buldhana as a Member, (3) Superintendent of Police, Yavatmal as a Member, (4) Superintendent of Police, Akola as a guest Member, and (5) Reader (Deputy Superintendent of Police) at the office of Deputy Inspector General of Police, Amravati Range, Amravati as a Member Secretary.

On 06.10.2022 the Police Establishment Board at the range level held a meeting to deliberate upon serious defaults committed by the applicant and to consider transferring him out of the district. Minutes of meeting of the Board held on 06.10.2022 are at A-R-5 (at pages 85 to 109). As per these minutes defaults 1 to 3 concerned utter disregard shown by the applicant to instructions/ directions received from his superiors for curbing activities of gambling and sale of gutka because of which Special Squad of Akola Police had to effect raids on gambling dens and gutka joints. Default no. 4 was regarding arrest of one Shyam Verma. The arrestee was not produced before the concerned J.M.F.C. within 24 hours of his arrest. The applicant connived with his sub-ordinates and did not give any intimation of arrest of Shyam Verma to his superiors.

Shyam Verma was arrested as a receiver of stolen property i.e. gold. In police custody he was tortured and subjected to extreme humiliation.

Regarding the incident of firing the Board concluded as follows:-

“एकंदरीत वरील घटनेमध्ये घडलेल्या घडामोडी बाबत श्री संतोष महल्ले, पोलीस निरीक्षक, स्थानिक गुन्हे शाखा, अकोला यांचे अधिनस्त पाठविलेल्या पथकासोबत कोणताही संपर्क वा मार्गदर्शन केले नसल्याचे स्पष्ट होते व आवश्यक नसतांना फक्त अशा प्रकारचे लोक जे पोलीसांचे विरुद्ध जातात त्यांचेमध्ये दहशत निर्माण करणेकामी गोळीबार करण्यात आल्याबाबत श्री संतोष महल्ले हे प्रथमदर्शनी जबाबदार असल्याचे झालेल्या चौकशीत दिसून येते. श्री. संतोष महल्ले, पोलीस निरीक्षक, स्थानिक गुन्हे शाखा, अकोला तसेच आरोपीस अटक कारवाई करण्याकरीता आलेले पथकातील अधिकारी व अंमलदार हे या नियोजनबद्ध कटकारस्थानात सहभागी असल्याचे वत्यांची या कार्यवाही संबंधाने केलेली कृती ही पोलीस दलाची प्रतिमा मलीन करणारी असल्याचे दिसून येते. या कार्यवाहीत श्री संतोष महल्ले, पोलीस निरीक्षक, स्थानिक गुन्हे शाखा, अकोला हे नमुदप्रमाणे कसुरदार दिसून येत आहे. त्याबाबतचा अहवाल पोलीस महासंचालक, म राज्य, मुंबई यांना कार्यालयाचे पत्र क्रमांक सिबी/अप/डी-९/अमरावती फायरिंग [प्रकरण/१२९१/२०२२](#), दिनांक २५/०८/२०२२ अन्वये सादर करण्यात आलेला आहे.”

The Board further concluded:-

“याबाबत शाम धनराज वर्मा, यांनी न्यायालयात केलेल्या दिनांक १४/०९/२०२२ रोजीच्या तक्रारीवरून एम.केस क्रमांक २७५/२०२२ कलम ३७७, ३४१, ३५४, ३४३, ३४८, ३५७, ३५८, ३६२, ३६८, २९४, ३२४, ३२६, ३३०, ३३१, ४४७, ४५२, ३५२, २०१, ५०४, ५०६, ५०९, ३४, १२०, (ब) भांदवि, प्रमाणे आता स्थागुशा येथील अधिकारी व कर्मचारी यांचेवर गुन्हा दाखल झाला आहे. पोलीस निरीक्षक महल्ले स्थानिक गुन्हे शाखा अकोला यांना अकोला जिल्हयात ठेवल्यास सदरहू गुन्हयातील तपासण्यात येणारे साक्षीदार, यांचेवर दबाब येण्याची शक्यता आहे तसेच आपल्या अधिकाराचा दुरुपयोग करून दबाब आणीत असल्याबाबत तक्रारी प्राप्त होत

आहेत. पोनि महल्ले याचेकडून तपासामध्ये ढवळाढवळ करण्याची शक्यता या प्राप्त तक्रारी नुसार नाकारता येत नाही तरी निष्कक्ष तपास होण्याच्या दृष्टिकोनातून त्यांना अकोला जिल्हयामधून अन्य जिल्हयात त्यांची बदली करणे ही कायदेशिररित्या संयुक्तीक बाब आहे.

श्री संतोष महल्ले पोनि स्थागुशा यांनी आपले अधिनस्त पथकातील अधिकारी यांना तपासाबाबत वेळोवेळी मार्गदर्शन करणे आवश्यक होते परंतु त्यांनी तपासाबाबत मार्गदर्शन केल्याचे गुन्ह्याचे केस डायरीचे अवलोकन करता दिसून येत नाही यावरून पोनि महल्ले यांचे वर्तन स्थानिक गुन्हे शाखेचे प्रभारी अधिकारी या पदाचे जबाबदारीचे विसंगत असल्याचे दिसून येत आहे. पोनि महल्ले हे त्यांचे अधिपत्याखालील कर्मचारी यांचेवर नियंत्रण ठेवण्यास असमर्थ ठरले. पोनि, महल्ले यांनी त्यांचे कर्तव्य बजावत असतांना कर्तव्य परायणता ठेवले नाही. त्यांचे हे वर्तन नियमबाह्य व पोलिस दलास न शोभणारे आहे. तसेच त्यांचे वर्तन सामान्य जनतेच्या मनामध्ये पोलीसांचे तपासाचे कार्यपध्दतीवर संशय निर्माण करणारे आहे. त्यामुळे पोलीस दलाची प्रतिमा जनमानसात मलीन झाली आहे, असे विभागीय चौकशीअंति सिध्द झाल्याने या सर्व बाबीची दखल घेत 'जनहितार्थ' व प्रशासकीय सोयीचे (In public interest and for administration exigency) याबाबीचा विचार करता पोनि, महल्ले स्थागुशा यांची अकोला जिल्हामधून अन्य जिल्हयात बदली करणे आवश्यक आहे."

4. By orders dated 17.01.2022 and 13.09.2022 (A-R-1 and A-R-2, respectively) punishment was imposed by respondent no. 3 on the applicant as follows:-

“आदेश- पोलिस निरीक्षक, श्री संतोष महल्ले, प्रभारी अधिकारी पोस्टे अकोट शहर जि. अकोला, यांना उक्त कसुरीसाठी या कार्यालयाचे का. दा. नो. क्र. अप/कक्ष-५/कक्ष-५/पोनि-महल्ले/कसुरी३२/कादानो/२०२१/१४२६, दिनांक १५.०७.२०२१ अन्वये प्रस्तावित करण्यात आलेली 'पुढील देय वार्षिक वेतनवाढ दोन (०२) वर्षाकरीता (अपरिणामकारक) रोखणे' ही शिक्षा कायम करण्यात येत आहे.

सदर शिक्षेने अपचारी व्यथित होत असल्यास हे आदेश प्राप्त झाल्याचे दिनांकापासून ६० दिवसाचे आत मा. पोलीस महासंचालक, म. रा. मुंबई यांचेकडे योग्य मार्फतीने अपील अर्ज सादर करू शकतात.”

“आदेश- पोलिस निरीक्षक, श्री संतोष महल्ले, स्थानिक गुन्हे शाखा अकोला यांना उक्त कसुरीसाठी या कार्यालयाचे का. दा. नो. क्र. अप /कक्ष-५ /अकोला /पोनि-महल्ले /कसुरी /कादानो /२०२१/२३९१, दिनांक २६.११.२०२१ अन्वये प्रस्तावित करण्यात आलेली ‘पुढील देय वार्षिक वेतनवाढ दोन (०२) वर्षाकरीता (अपरिणामकारक) रोखणे ’ या शिक्षेत अंशतः बदल करून ‘पुढील देय वार्षिक वेतनवाढ एक (०१) वर्षाकरीता (अपरिणामकारक) रोखणे’ ही शिक्षा देण्यात येत आहे.

सदर शिक्षेने अपचारी व्यथित होत असल्यास हे आदेश प्राप्त झाल्याचे दिनांकापासून ६० दिवसाचे आत मा. पोलीस महासंचालक, म. रा. मुंबई यांचेकडे योग्य मार्फतीने अपील अर्ज सादर करू शकतात.”

5. In his rejoinder at pp. 112 to 122 the applicant has contended as follows. His A.C.Rs. for last five years were A+ (outstanding). After he took charge of Local Crime Branch, Akola rate of detection had gone up as can be gathered from perusal of A-A-1 (at p. 123). Primary responsibility of raiding gambling dens was of local police as is made clear by Section 22 – O of the Act which says that there will be separation of investigation police from law and order police. Likewise, raiding gutka dens was primarily duty of Food and Safety Authority (FASA) and not the local crime branch. The F.I.R. registered on the basis of private complaint of Shyam Verma does not name the applicant. Against punishment imposed on him, the applicant has preferred appeals. Under Schedule (I)

of the Bombay Police (Punishment and Appeal) Rules, 1956, respondent no. 3 had no authority to impose such punishments since the applicant is holding the post of Police Inspector.

6. The crux of the matter is whether, while passing the impugned order, recourse to Section 22N(2) of the Act was justified. It is not in dispute that the Board which was constituted did have power to recommend mid-term transfer of the applicant u/s 22N(2) of the Act.

7. Section 22N(2) reads as under:-

“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.”

8. To assail the impugned order the applicant has relied on **“Kishor Shridharrao Mhaske Vs. Maharashtra OBC Finance and Development Corporation, Mumbai & Ors. 2013 (3) Mh.L.J. 463”**. In this case it is held:-

“Mandatory requirements of the provision under Section 4(5) of the Act cannot be ignored or by-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”

9. The applicant has further relied on “**Somesh Tiwari Vs. Union of India 2008 CJ (SC) 1539**”. In this case it is held:-

“Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incidence 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.”

In para 20, on facts, it was held:-

“20. 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”

10. The applicant has further relied on “**State of Maharashtra Vs. Padmashri Shriram Bainade 2014 CJ (Bom) 2753**”. In this case, on facts, it was held that demonstrably there were no special or exceptional reasons nor was there anything to show that the transfer was made in public interest. Thus, while passing the impugned order State had acted neither fairly nor bonafide and hence it was liable to be quashed and set aside.

11. The applicant has also relied on “**Shri Santosh Machhindra Thite vs. The State of Maharashtra & 2 Ors. (Judgment dated 04.02.2019 delivered in W.P. No. 9844 of 2018 by the Hon’ble Bombay High Court)**”. In this case it is held:-

“However, in the present case, we are not interfering with the transfer order on the ground that it is being done at the behest of public representative, but we are interfering on the ground that the same is being done without following the relevant provisions of the Maharashtra Transfer Act. For the sake of repetition, we reiterate that such a transfer, either of Respondent No. 2 or the petitioner, which is a subject matter of the present petition, could be done only in exceptional circumstances and for special reasons and that too by recording the reasons in writing. We find that no such reasons or circumstances of whatsoever nature are recorded in the impugned order of transfer and also in the impugned order passed by the

learned Maharashtra Administrative Tribunal. Therefore, the only course that is available to us is to find out the reasons from the impugned transfer order dated 8th July, 2011. The only reasoning given is "in the public interest" and "administrative convenience". When the Maharashtra Transfer Act stipulates recording of reasons, first it has to be recorded in the original file. If any transfer which takes away the right guaranteed to an employee of not being transferred prior to completion of his tenure is allowed, only by stating that it is "in the public interest" or on the ground of "administrative exigency", then it would frustrate the very purpose of the Act and make the provisions of such Act redundant. In our considered view, it is necessary to record at least some reason as to how "a special case" is made out. No doubt that we do not expect an authority to write an elaborate judgment to make out "a special case". However, at the same time, in order to enable the Court to exercise the powers of judicial review, at least it is necessary for an authority to write in brief as to how "a special case" is made out, so that the powers of judicial review, which has been held to be a basic structure of the Constitution, can be properly exercised by the High Court/Supreme Court. In that view of the matter, we find that the petition deserves to be allowed."

12. The C.P.O. has relied on the following rulings which *inter alia* deal with exercise of power under Section 22 N of the Act.

(1) **Ashok Rangnath Barde versus State of Maharashtra and two Others.** Judgment of Hon'ble Bombay High Court dated 22.12.2018 in W.P.No.5320 of 2018.

(2) **Sachin Kisanrao Lule versus The State of Maharashtra and two Others.** Judgment dated 17.01.2022 of this Tribunal in O.A.No.902/2021.

13. The C.P.O. has further relied on-

Somesh Tiwari versus Union of India and Others (2009) 2 Supreme Court Cases 592. In this case the Hon'ble Supreme Court has held that transfer in administrative exigencies ought not to be interfered with by Courts.

14. The C.P.O. has also relied on-

Vazeer Hussain Shaikh versus State of Maharashtra and two Others. Judgment of the Bombay High Court in W.P.No.6809/2017 dated 15.11.2017. In this case after considering the facts and the law applicable thereto it was held-

On reading of the provision and in view of the material placed before us, we are of the opinion that though, the transfer order refers the only ground of

administrative exigency, the material placed before us also satisfies the other ground i.e. public interest.

It was further observed-

In unreported judgment of this Court in Writ Petition No.14200/2016, the State had challenged the order of the Maharashtra Administrative Tribunal, thereby allowing the Original Application filed by the applicant/petitioner challenging his order of transfer. A ground was raised that it was a mid-term transfer and on the ground of exceptional circumstance, the transfer was effected without the approval of the Police Establishment Board. The State submitted before the Division Bench that there were serious allegations against the respondent no.1. A Departmental Enquiry was also conducted in the matter. Necessary material was brought before the Board. An affidavit was also filed through the Member Secretary of the Police Establishment Board submitting that the Board had considered the material, which was in the form of serious allegations against the respondent no.1 and it was a conscious decision of the Board to direct mid-term

transfer of the respondent no.1 For this reason, the Division Bench found that the order passed by the Tribunal was unsustainable and the Writ Petition filed by the State challenging the order of the Tribunal was allowed.

These observations apply with considerable rigour to the facts of this case.”

15. So far as facts of the case in hand are concerned, what is elaborately set out in the minutes of the meeting of the Board held on 06.10.2022 to which I have adverted hereinabove, is clearly sufficient to demonstrate that the impugned order squarely falls within the four corners of Section 22N(2) of the Act. For various defaults punishment has been imposed on the applicant by respondent 3. It is the contention of the applicant that respondent 3 was not competent to impose these punishments. It is a matter of record that against these punishments the applicant has filed appeals. The basic issue in the case, as stated above, is whether the impugned order satisfies the parameters set in Section 22N(2) of the Act. I find that the impugned order does satisfy these parameters.

16. It was submitted by Id. C.P.O. that the applicant made a false statement before this Tribunal on 13.10.2022 that he had not handed over the charge and thereby obtained interim stay to the impugned

order, and hence he should be saddled with heavy costs, there is no cogent material to accept this contention. For the reasons discussed hereinabove the **original application is dismissed and interim order stands vacated, with no order as to costs.**

(Shri M.A.Lovekar)
Member (J)

Later on :-

Ld. Counsel for the applicant prays for extension of interim order which was subsisting till today so as to enable the applicant to file a Writ Petition challenging order of this Tribunal. This prayer is stoutly opposed by ld. C.P.O.. It is submitted that the interim order was subsisting for a considerable period. It is further submitted that this Tribunal has upheld correctness of the impugned order whereby, on account of multiple defaults, the Board has passed an order transferring the applicant out of the district and that too on a non-executive post.

2. On considering rival submissions I have come to the conclusion that the interim order by way of stay to the impugned order which was subsisting till today is required to be extended so that the applicant can avail a remedy provided under the Law by filing a Writ Petition before the Hon'ble High Court. The interim order passed by this Tribunal is extended and shall subsist till 15.12.2022.

3. **Steno copy is granted.**

(Shri M.A.Lovekar)
Member (J)

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

Name of Steno : Akhilesh Parasnath Srivastava.

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

Judgment signed on : 12/12/2022.
and pronounced on

Uploaded on : 13/12/2022.