

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 307/2022(S.B.)

Shri Shyam S/o Shriram Sontakke,
Aged 55 years, Occ. Service,
R/o Churiya Layout, Wani,
Tq. Wani, Dist. Yavatmal.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Additional Chief Secretary,
Home Department,
Mantralaya, Mumbai-32.
- 2) The Superintendent of Police,
Having its Office at LIC Square,
Yavatmal, Tq. & Dist. Yavatmal-445201.
- 3) Ramkrishna Mahalle,
Aged about 55 years, Occ. Service,
R/o C/o Thanedar, Police Station
Wani, Dist. Yavatmal.

Respondents

Shri C.S.Kaptan, Ld. senior counsel for the applicant.
Shri S.A.Deo, Ld. C.P.O. for the respondents 1 and 2. Shri S.N.Gaikwad, ld.
Counsel for the respondent no.3 (Caveator).

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

Dated: - 30thAugust 2022.

JUDGMENT

Judgment is reserved on 25th August, 2022.

Judgment is pronounced on 30thAugust, 2022.

Heard Shri C.S.Kaptan, learned senior counsel for the applicant and Shri S.A.Deo, learned C.P.O. for the Respondents 1 & 2 and Shri S.N.Gaikwad, ld. counsel for the respondent no.3 (Caveator).

2. In this O.A. the applicant has impugned the order dated 09.03.2022 transferring him from Wani Police Station to District Traffic Control Branch, Yavatmal.

3. Case of the applicant is as follows.

One Vaibhav Kumar Jadhav, P.I., was working as a Thanedar at Wani Police Station. Because of his transfer he was relieved on 04.09.2021. Additional charge of the said post was kept with the applicant who was then attached to District Traffic Control Branch, Yavatmal (Annexure A-1). By order dated 12.10.2021 (Annexure A-2) the applicant was transferred to Wani Police Station as a Thanedar. By the impugned order dated 09.03.2022 (Annexure A-3) he was transferred to District Traffic Control Branch, Yavatmal. This was a mid-term transfer. For effecting the same Section 22 N (2) of the Maharashtra Police Act was resorted to though none of the contingencies stipulated in the said provision was attracted. On 09.03.2022 the P.E.B. recommended transfer of the applicant. On the same day the impugned order was passed. Such alacrity suggested malafide intention of effecting the transfer only to accommodate respondent no.3. The P.E.B. comprised respondent no.2 and 3 Officers working under him

who could be easily influenced by him. By communication dated 03.02.2022 (Annexure A-4) the applicant was called upon to explain why he had failed in controlling gambling activities and sale of Gutkha, scented Tobacco within his jurisdiction. He submitted a detailed explanation dated 08.02.2022 (Annexure A-5). So far as the impugned order was concerned, there was nothing to suggest that it was an exceptional contingency involving either public interest or administrative exigency. Hence, the impugned order purportedly passed under Section 22 N (2) of the Act is liable to be quashed and set aside.

4. Reply of respondent no.2 is at pp.89 to 110. He has resisted the O.A. on the following grounds –

(1) Section 22 N (2) of the Act was rightly and justifiably invoked in this case.

(2) The impugned transfer was recommended by the P.E.B. for compelling and demonstrable reasons.

(3) On 29.01.2022 a special team formed by the Deputy Inspector General of Police, Amravati range had raided four gambling dens and Gutkha selling joints falling under the jurisdiction of Wani Police Station as reflected in Annexure R-1 where the applicant was posted as a Thanedar.

(4) By order dated 03.02.2022 (Annexure R-2) the applicant was placed under suspension in contemplation of Departmental Inquiry.

(5) On 03.02.2022 itself show cause notices (Annexure R-3) were issued to other Police Personnel attached to Wani Police Station who, too, were involved.

(6) By a consolidated show cause notice dated 03.02.2022 (Annexure R-4) the applicant and other Police Personnel attached to Wani Police Station were informed of raids on gambling dens and Gutkha joints within their jurisdiction. To this show cause notice the applicant submitted his reply (Annexure R-5).

(7) By communication dated 10.02.2022 (Annexure R-6) respondent no.2 made a request to the Deputy Inspector General of Police, Amravati range to initiate Departmental Enquiry against the applicant.

(8) Minutes of the meeting of the P.E.B. (Annexure R-7) held on 09.03.2022 show that the P.E.B. considered prose and cons and then unanimously recommended the impugned transfer.

(9) By issuing charge sheet dated 08.04.2022 (Annexure R-8) Departmental Enquiry was initiated against the applicant.

(10) In response to a starred question raised in the Maharashtra Legislative Assembly regarding the incident i.e. raids dated

29.01.2022 a detailed report (Annexure R-10) was submitted to the Director General of Police, Maharashtra State.

5. In his reply at pp.83 to 88 respondent no.3 has maintained that the impugned order of transfer of the applicant does not suffer from any infirmity.

6. To his rejoinder at pp.202 to 209 the applicant has attached Annexures A-8 to A-11 to contend that at the material point of time Wani Police Station was understaffed, inspite if his requests adequate staff was not provided and he could not be accused of dereliction of duty considering the totality of circumstances.

7. Relevant portion of Section 22(N) of the Maharashtra Police Act which was invoked in this case is as under :-

22 (N). 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) X XX

(b) X XX

(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) X XX

(e) X XX

The competent authority for the general transfer shall be as follows, namely :-

<u>Police Personnel</u>	<u>Competent Authority</u>
(a) X XX	XXX
(b) X XX	XXX
(c) Officers up to Police Inspector.	(c) Police Establishment Board at Commissionerate Level.

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.

Explanation :-For the purposes of this sub-section, the expression “Competent Authority” shall mean :-

<u>Police Personnel</u>	<u>Competent Authority</u>
(a) X XX	XXX
(b) X XX	XXX
(c) X XX	XXX
(d) X XX	XXX
(e) Police Personnel up to the rank of Police Inspector for transfer within the district.	Police Estt. Board of at District level.

From the aforequoted provision it becomes clear that the impugned order was one of mid-term transfer and for effecting such transfer Section 22 N (2) of the Act could be used only in exceptional case, in public interest and on account of administrative exigencies.

8. It was argued by Shri Kaptan, the learned Senior Counsel for the applicant, by relying on **“Miss X versus Registrar General, High Court of Madhya Pradesh and another 2022 (3) SLR 102 (S.C.)”** that a mid-term transfer cannot be simply treated to be an incidence of service because it thwarts the legitimate expectation of completing the fixed tenure at the place of present posting.

9. It was further submitted that the impugned order states that it was passed on account of “कसुरी” i.e. dereliction or lapse on the part of the applicant though at this point of time neither dereliction of duty nor lapse allegedly committed by the applicant was proven. In reply, it was submitted by the learned C.P.O. that the impugned order was preceded by the order of suspension of the applicant in contemplation of initiation of Departmental Enquiry as well as show cause notice dated 03.02.2022 (Annexure R-2 and R-3) spelling out the exact nature of dereliction of duty, and all these circumstances taken together were sufficient to pass the impugned order under Section 22 N (2) of the Act.

10. The impugned order is passed under Section 22 N (2) of the Act. It is not in dispute that it is passed by the competent authority. It cannot be disputed that the competent authority has powers to resort to this provision if any of the contingencies stipulated therein arises. Therefore, only it will have to be seen whether invocation of this power in the instant case falls within the four corners of said enabling provision. The documents attached to reply of respondent no.2 which have been discussed above satisfactorily establish that the impugned order could be said to have been passed as an exceptional case in public interest and on account of administrative exigencies.

11. 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.

12. 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.

13. Shri S.N.Gaikwad, Id. Advocate for respondent no.3, in addition to adopting submissions of the C.P.O. 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. As 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.

14. For the reasons discussed hereinabove I have come to the conclusion that in this case Section 22 N (2) of the Act was justifiably resorted to and therefore the impugned order does not suffer from any infirmity. The Original Application is accordingly dismissed with no order as to costs.

(M.A.Lovekar)
Member (J)

Dated – 30/08/2022

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

Name of Steno : Raksha Shashikant Mankawde
Court Name : Court of Hon'ble Member (J) .
Judgment signed on : 30/08/2022.
and pronounced on
Uploaded on : 30/08/2022.