

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 559/2021(S.B.)

Rajmohan Singh,
Aged : 53 Yrs, Occupation : Service :
Assistant Sub-Inspector, (ASI)
R/O : Chas Colony, Near Tirpude Hospital, Nagpur.
Tah+Dist : Nagpur, Maharashtra-440026.

Applicant.

Versus

- 1) State of Maharashtra,
Through its Commissioner of Police,
Nagpur Police Commissioner Office, Nagpur,
Civil Line, Nagpur, Maharashtra-1.

- 2) Senior Police Inspector,
Sitabuldi Traffic Zone, Nagpur City,
Nagpur.

Respondents

Shri Y.Y.Humne, Ld. counsel for the applicant.
Shri A.M.Ghogre, Ld. P.O. for the respondents.

Coram:- Hon'ble Shri M.A.Lovekar, Member (J).
Dated: - 20th October 2022.

JUDGMENT

Judgment is reserved on 6th October, 2022.

Judgment is pronounced on 20th October, 2022.

Heard Shri Y.Y.Humne, learned counsel for the applicant and Shri A.M.Ghogre, learned P.O. for the Respondents.

2. In this O.A. order dated 28.6.2021 (Annexure A-1) transferring the applicant, who is holding the post of Assistant Sub-Inspector, from Traffic Police, Sitabuldi, Nagpur to Police Headquarter, Nagpur is impugned on the grounds that it is mid-term, arbitrary, malafide and opposed to Section 22 N of the Maharashtra Police Act. It is the contention of the applicant that he had received several certificates of appreciation (Annexure A-3 collectively) and the impugned order was not reconsidered in spite of representation dated 28.02.2021 (Annexure A-2) made by him to respondent no.1.

3. In his reply at pp.40 to 43 respondent no.1 has contended that on recommendation of P.E.B. the impugned order was passed and P.E.B. has such powers under Section 22 N (2) and 22 N (c) and (e) of the Maharashtra Police Act to effect transfers in exceptional circumstances, in public interest and to meet administrative exigencies, of Police Personnel up to the rank of Police Inspector. His further contention is that it is settled legal position that P.E.B. need not mention in the minutes of its meeting actual reasons in detail and its subjective satisfaction is all that is needed to sustain the recommendation for transfer. According to respondent no.1 several complaints of demand of bribe for assigning duties

were received against the applicant which necessitated his mid-term transfer.

4. Rejoinder of the applicant is at pp.44 to 46 in which following grounds are raised to assail the transfer order-

- (1) Mere mention in the order that transfer was made on administrative ground is not enough. Unless specific ground is mentioned, requirement of transparency would not be met.
- (2) Instant case was not an exceptional case nor was public interest involved in any way.
- (3) Vague and untenable allegations were subsequently concocted to lend appearance of legitimacy to the impugned order.
- (4) Respondent no.1 did not attach minutes of meeting of P.E.B. said to have been held on 28.6.2021 to his initial reply. In all probability such meeting was not at all held.
- (5) The impugned order was issued on behalf of respondent no.1 who was not competent to pass it. Such power vested in P.E.B. alone.
- (6) Before passing the impugned order following steps stipulated in the circular dated 8.11.2017 issued by the Special Inspector General of Police, Mumbai were not taken which vitiates the impugned order-

५. थोडक्यात, वरील मा.महाराष्ट्र प्रशासकीय न्यायाधिकरण, नागपूर खंडपीठ यांनी नोंदविलेले Ratio/निरिक्षणे राज्यातील सर्व घटक पोलीस प्रमुखांच्या निदर्शनास आणण्यात येत आहे कि, कोणत्याही पोलीस कर्मचारी ते पोलीस अधिकारी पर्यंतच्या पोलीस अधिका-यांची जर महाराष्ट्र पोलीस अधिनियम, १९५१ मधील कलम २२ न (२) मधील तरतुदीनुसार म्हणजे (1) **Exceptional cases**, (2) **Public Interest** and (3) **On account of Administrative exigency** या तीघाही निकषांच्या आधारावर ज्याप्रकरणामध्ये सामान्य पदावधी (Normal Tenure) पूर्ण होण्याच्या आधी जर कर्मचारी/अधिकारी (पो.नि.पर्यंत) यांची त्यांच्या प्रतिकूल कामगिरीवरून किंवा त्यांच्या प्रतिकूल वर्तणूकीच्या आधारावर बदली करावयाची असल्यास त्यांच्या वर्तणूकीच्या बाबतील संबंधित घटक पोलीस प्रमुखांनी निपक्ष:पातीपणे प्रथमतः प्राथमिक चौकशी करणे आवश्यक आहे.

६. अशा प्राथमिक चौकशीमध्ये, ज्या पोलीस कर्मचारी/अधिका-यांच्या (पो.नि.पर्यंत) सामान्य पदावधी पूर्ण होण्याच्या आधी बदली करावयाची असेल, तर त्यांचा सुध्दा अशा प्राथमिक चौकशीमध्ये जबाब नोंदवून घेणे आवश्यक आहे.

७. अशा प्रकारे सर्व जाब-जबाबाची नोंदणी केल्यानंतर, जर प्राथमिक चौकशीमध्ये ज्या अशा संबंधित पोलीस कर्मचारी/अधिका-यांच्या (पो.नि.पर्यंत) सामान्य पदावधी पूर्ण होण्याआधी बदली करावयाची असेल, त्यांच्या विरुद्ध प्राथमिक चौकशीमध्ये सकृतदर्शनी त्यांनी त्यांची वर्तणूक प्रतिकूल आढळल्याची बाब पूढे आल्यास, अशा प्राथमिक चौकशीचा अहवाल त्याच्या सर्व कागदपत्रांसह संबंधित पोलीस आस्थापना मंडळासमक्ष ठेवणे आवश्यक आहे.

5. By filing affidavit which is at pp.65 to 69 the applicant has reiterated his allegation that on 28.6.2021 meeting of P.E.B. was not held. His further

contention is that P.E.B. was comprised of three instead of four officers competent to hold it. According to him, the minutes were typed on a plain paper and not on official letterhead. His further contention is that the impugned order is allegedly based *inter alia* on anonymous complaints though no cognisance could have been taken of such complaints in view of G.R. dated 25.02.2015 (at pp.71/72).

6. The applicant has filed C.A.No.394/2021 to punish the respondents by initiating action under Section 304, Cr.P.C. against them. According to the applicant, to obtain favourable order in this O.A. the respondents have suppressed several facts, and the settled legal position.

7. Reply of respondent no.1 to C.A.No.394/2021 reiterates his stand taken to oppose the O.A. It also refers to the following-

It is further submitted that the conduct of applicant has not been as good as claimed by him as per his service record, he was suspended twice in the past and on 13/12/2014 an offence under Section 354, 451, 452 of IPC was registered against him at Jaripatka Police Station. Most recently in 2017, the applicant was suspended for indulging in personal gain and for taking bribe of Rs. 10,000/- from those indulging in animal trafficking. After conduct of due departmental inquiry he was awarded punishment of stoppage of annual Increment for 3 years (without impacting pension) from 4/6/2018. This shows that the appreciation letters were only an attempt to encourage

good conduct from the applicant. The copies of suspension orders are annexed herewith and collectively marked as Annexure -R-2.

To this reply copy of minutes of P.E.B's meeting held on 28.6.2021 is attached. Contrary to what the applicant has alleged, the minutes were recorded on letterhead of Police Commissioner, Nagpur.

8. The applicant has relied on the judgment dated 2.12.2019 delivered by Principal Bench of this Tribunal in O.A.Nos.747/2019 with 748/2019. In this case mid-term transfer was effected on the ground that there were complaints against the applicant. Transfer orders were quashed and set aside inter alia on the ground that procedure stipulated in circular dated 8.11.2017 (which is mentioned above) was not followed.

9. The applicant has further relied on the judgment dated 28.11.2018 passed by the Principal Bench in O.A.No.861/2018. In this case there was no prior approval for transfer of the highest authority which was needed. Hence, the impugned transfer orders were quashed and set aside. This conclusion does not apply to the facts of the case in hand.

10. The respondents, on the other hand, have relied on the judgments dated 25.3.2022 and 8.10.2018 in O.A.No.958/2021 and O.A.No.369/2018 passed by the Principal Bench and this Bench, respectively of the Tribunal. In these cases, on facts it was held that the impugned orders of transfer did not call for interference.

11. For the reasons discussed hereinabove I hold that allegations in C.A.No.394/2011 are not backed up by cogent material but the impugned order requires interference as it was not preceded by the procedure stipulated in circular dated 8.11.2017, though it was stated to be based on complaints. Hence, the order.

ORDER

The O.A. is allowed. The impugned order dated 28.6.2021 (Annexure A-1) is quashed and set aside. The applicant shall join his earlier place of posting.

C.A.No.394/2021 is rejected. No order as to costs.

(M.A.Lovekar)
Member (J)

Dated – 20/10/2022

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 : 20/10/2022.
and pronounced on
Uploaded on : 20/10/2022.