

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.851 OF 2019
(Subject:- Transfer)**

DISTRICT:-AURANGABAD

Ravindra Ramdas Gite,)
Age:- 39 years, Occ. Service as Police Shipai,)
R/o. M-5, Apratim Gharkul,)
Satara Parisar, Aurangabad.)...**Applicant**

V E R S U S

1. The Superintendent of Police,)
Lohmarg (Railway), Aurangabad,)
Near Office of Superintendent of Police,)
Aurangabad (Rural),)
T.V. Centre, CIDCO, Aurangabad.)...**Respondent**

APPEARANCE : Shri A.B. Rajkar, learned Advocate for
the Applicant.
: Shri D.R. Patil, learned Presenting
Officer for the Respondent.

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

DATE : **04.01.2022**

O R D E R

1. By invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, this Original Application is filed challenging the impugned transfer order of the applicant dated 02.03.2019 (Annex. 'A-1') issued by the respondent, whereby the

applicant has been temporarily transferred till further orders from Railway Police Station, Aurangabad to Railway Police Station, Nandurbar.

2. **The facts in brief giving rise to this application can be summarized as follows:-**

- (i) Initially the applicant was appointed as a Police Constable on 01.08.2006. He came to be posted to Railway Police Station, Aurangabad. Being the Police Constable his normal tenure of posting is five years as per Section 22N(1) (b) of Maharashtra Police Act, 1951. Before completing the said period, the impugned transfer order dated 02.03.2019 (Annex 'A-1') is issued by the respondent, thereby transferring him from Railway Police Station, Aurangabad to Railway Police Station, Nandurbar on temporary basis till further orders and without specifying any period. Thereby the applicant was relieved by order dated 06.03.2019 (Annex. 'A-2') for joining the transferred place and as per the said relieving order, the applicant has joined at the transferred place.
- (ii) It is further contended that because of the said order, the family of the applicant is disturbed. The impugned

order is bad in law, perverse, illegal and contrary to the provision of law. The applicant came to know that the said impugned order is passed in view of default report submitted by his superior leveling allegations that the applicant reports late on duty, does not obey the orders of the superior, remains absent from the duty etc. The said allegations are false. No exceptional reason of public interest or administrative exigency has been shown behind passing the impugned order.

- (iii) The applicant sought to seek information by making application dated 09.08.2019 (Annex. 'A-3') under Right to Information Act (R.T.I.) from the respondent. The respondent, however, did not supply any information. The applicant made representation dated 24.08.2019 (Annex. 'A-4'), seeking transfer back to Railway Police Station, Aurangabad. No Departmental Enquiry is pending against the applicant. The applicant has worked honestly throughout his tenure. In view of same, the impugned order is not sustainable in law and is liable to be quashed and set aside. Hence this Original Application.

3. Affidavit-in-reply is filed on behalf of respondent by Shri Dilip Mahadeo Sabale working as Police Inspector. Thereby he denied the adverse contentions raised in the Original Application. It is specifically contended that during the period of 2010 to 2019, eight serious punishments have been imposed upon the applicant for dereliction of duties such as remaining absent from duty, leaving duty point, sending fake complaints against the senior officers, threatening In-charge Officer, spreading fake news of injustice by In-charge officer. In order to substantiate the same, entries in the service book are produced at Annexure 'R-1'.

4. It is further contended that the impugned order is issued by following appropriate procedure and more particularly on the basis of recommendation of the Police Establishment Board as reflected in Annex. 'R-2' collectively. Impugned order is more particularly issued in the background of the default report submitted by the In-charge officer of the Railway Police Station, Aurangabad, which would show that the applicant is in the habit of remaining absent from duty for days together including other serious complaints. The applicant is a criminal minded person and indisciplined and always remains absent from duty. His behavior is rude. The respondent would look into the impugned

order at the time of General Transfer in the year 2020 and as such, the impugned order is passed till further orders which is legal and proper.

5. Affidavit-in-rejoinder is filed on behalf of the applicant thereby denying all the adverse contentions raised in the affidavit-in-reply. The applicant has annexed the G.R. dated 11.02.2015 (Exh. 'RR-1') to substantiate his contention that no case is made out for midterm and mid-tenure transfer order as required within a parameter of this G.R. and therefore, the impugned order is liable to be quashed and set aside.

6. I have heard the arguments advanced by Shri A.B. Rajkar, learned Advocate for the on one hand and Shri D.R. Patil, learned Presenting Officer for the respondent on other hand.

7. Learned Advocate for the applicant strongly argued before me that the impugned order dated 02.03.2019 does not satisfy the tests laid down in the Sub Section 2 of the Section 22N of the Maharashtra Police Act which provides as follows:-

“22N (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 made mid-term transfer of any Police Personnel of the Police Force:

It also does not satisfy the tests or parameters laid down in the G.R. dated 11.02.2015 (Exh. 'RR-1'), whereby transfer cannot be effected on the basis of unverified complaints howsoever serious may be.

8. Learned Advocate for the applicant more particularly relied upon the decision of the co-ordinate bench of Maharashtra Administrative Tribunal, Mumbai in **Original Application No.696/2019** decided on 15.10.2019 in the matter of **Shri Kishor Babanrao Jagtap Vs. The Superintendent of Police & two Ors.** Learned Advocate for the applicant submits that the facts in the said citation case and present case are similar and in such circumstances, temporary order of deployment from one place to another place, which was challenged in the case was terminated and the respondents therein were directed to repost the applicant on the original place and thereafter was given liberty to pass appropriate order of transfer if warranted and as deem fit in accordance to law.

9. As against that, the learned P.O. opposed the submissions made on behalf of the applicant and submitted that in the case in hand, the default report is based on the service record which shows that the punishments have been imposed upon the applicant for dereliction of duties such as remaining absent from duty. Moreover, the impugned order is passed by placing the matter before the requisite Police Establishment Board in accordance with law. Though the impugned order is of temporary nature, the respondent was going to consider the same in the General Transfer of the year 2020. Therefore, the facts in present case defer from the case law relied upon by the learned Advocate for the applicant.

10. After having considered the facts of this case on record, it is evident that the impugned order is passed with the concurrence of the Police Establishment Board as contemplated under Section 22J(2) of Maharashtra Police Act, 1951. It also seems to have been issued by invoking Sub-Section 2 of Section 22N of the Maharashtra Police Act, 1951, which speaks of the transfer in exceptional cases, in public interest and on account of administrative exigencies.

11. Admittedly, this is mid-term and mid-tenure transfer order. The report of Police Establishment Board is also placed on record. It shows that the recommendation was made in the background of the default report submitted by the superior In-charge officer of Railway Police Station, Aurangabad and in the background of alleged misconduct of the applicant in not attending the duty, not following the instructions of the superiors and the preliminary enquiry about the alleged misconduct of the applicant is made by the Sub-Divisional Officer.

12. Prima-facie it appears that while exercising the powers of transfer under Sub Section 2 of Section 22N of Maharashtra Police Act, 1951, the procedure has been adopted by placing the matter before the Police Establishment Board as contemplated under Section 22J of the Maharashtra Police Act, 1951, which empowers to transfer the police official in the category of Police Constable such as applicant.

13. However, at this stage, it would be just and proper to refer the judgment and order of Co-ordinate bench at Maharashtra Administrative Tribunal, Mumbai dated 15.10.2019 in the matter of **Shri Kishor Babanrao Jagtap Vs. The Superintendent of Police and two Ors.** In the said citation, the facts were of

almost similar in nature, where the impugned order was of temporary nature till further orders. In the said citation case, the legality of the said impugned order was considered in the background of the material on record and it was concluded that no illegality is seen in the impugned order of temporary deployment and challenge to the same is without merit.

14. However, in further discussion it is observed that such temporary deployment, if continued for longer period, may amount to transfer of the applicant under the guise of temporary deployment period, which is not permissible. Necessary observations are in paragraph Nos.10, 11, 12 and 13 of the said judgment and order, which are as follows:-

“10. Needless to mention that the Respondent No.1-Superintendent of Police have jurisdiction to depute the Police Personnel temporarily at another post, if circumstances warrants so. In the present case, the PEB in its minutes had categorically observed that the continuation of the Applicant at Boisar Police Station may not be conducive from the point of administration as well as law and order problem. In Paras 6 & 7, the PEC held as follows:-

“६. तसेच बोईसर पोलीस ठाणे हद्दीतील लोकप्रतीनिधी व विविध पक्षाचे पदाधिकारी, नेते मंडळी यांनी देखील प्रभारी अधिकारी श्री. किशोर जगताप हे अपमानास्पद वागणूक देतात. ते पालीस ठाण्यात आल्यावर त्यांच्या तक्रारी बाबत कानाडोळा करतात. सर्व पक्षाच्या पदाधिकाऱ्यांना संशयाच्या दृष्टीने पाहतात. पोलीस व जनता यांचेतील संबंध सौहार्दपूर्ण होण्याच्या दृष्टीने सर्व स्तरातून प्रयत्न होत असतांना त्यांची हि विकृती अत्यंत घातक आहे. पोनि/किशोर जगताप प्रभारी अधिकारी बोईसर पोलीस ठाणे यांचे कामकाज करण्याची पध्दत ही हेकेखोर व मनमानी स्वरूपाची आहे. ती पोलीस खात्याचे शिस्तीस धरून नाही असे त्यांचे वर्तनावरून स्पष्ट होते.

७. तसेच आगामी काळात लोकसभा निवडणूकीचे अनुषंगाने सर्वसामान्य जनतेचा पोलीसांबद्दल विश्वास संपादन करून जातीय तसेच सामाजिक सलोखा

निर्माण करणे आवश्यक असतांना तसेच आपलेकडील पोलीस अधिकारी/कर्मचारी यांना सोबत घेऊन सांघीक भावनेने व कर्तव्यनिष्ठेने काम करणे आवश्यक असतांना तसेच आपल्याकडील पोलीस अधिकारी/कर्मचारी यांना सोबत घेऊन सांघीक भावनेने व कर्तव्यनिष्ठेने काम करणे आवश्यक आहे. त्यांच्या या कृतीमुळे पोलीस ठाणे हद्दीत कायदा व सुव्यवस्था बिघडण्याची तसचे त्यामुळे मोठया अडचणी निर्माण होण्याची शक्ता नाकारता येत नाही. त्यामुळी त्यांची बोईसर पोलीस ठाणे येथून सदर गैरवर्तनाचे कारणास्तव इतरत्र बदली होणेकरीता प्राप्त अहवाल आस्थापना मंडळासमोर ठेवण्यात आला. सदर अहवाल व दस्तऐवजांचे साकल्याने अवलोकन करता, पोनि/किशोर जगताप यांच्या या कृतीमुळे बोईसर पोलीस ठाण्याचे हद्दीत कायदा व सुव्यवस्था बिघडण्याची तसेच त्यामुळे मोठया अडचणी निर्माण होण्याची शक्यता असल्याचे प्रथमदर्शनी दिसून आले आहे. अशा परिस्थितीत पोनि/किशोर जगताप यांना जनतेशी थेट संबंध येणाऱ्या बोईसर पोलीस ठाणे येथे कर्तव्यर्थ ठेवणे जनहितार्थ व प्रशासनिक दृष्टीने उचीत नसल्याने, महाराष्ट्रा पोलीस अधिनियम, १९५१ मधील कलम २२ न व त्याखालील सुधारीत स्पष्टीकरणानुसार अपवादात्मक प्रकरणी जनहितार्थ तसचे प्रशासनिक निकडीनुसार त्यांची पालघर जिल्हयाअंतर्गत बोईसर पोलीस ठाणे ते नियंत्रक कक्ष, पालघर येथे निव्वळ तात्पुरत्या स्वरूपात तैनात करण्याबाबत निर्णय घेण्यात आला.”

11. As such, in fact situation, the PEB thought it appropriate to temporary deploy the Applicant at Control Room, Palghar till further orders. Whether reasons which weighed with the authority for arriving at subjective satisfaction would qualify it as a fit case for temporary deployment of the Police Personnel would depend upon the facts of each case and there may be diverse consideration on the basis of which such decision was taken. The Tribunal cannot substitute its opinion for that of authority particularly when it is a case of temporary deployment. I, therefore, see no illegality in the impugned order of temporary deployment and the challenge to the same is without merit.

12. *However, it is necessary to note that temporary deployment should be for stipulated reasonable period. In the present case, ensuing Parliamentary Elections of May 2019 was one of the reason for temporary deployment of the Applicant at Control Room, Palghar. The Elections are over long ago. Now, the State Legislative Assembly Elections are underway and will be over by the end of this month. The Applicant has already completed more than seven months on temporary deployment posting at Control Room, Palghar. If such period of temporary deployment is continued for a longer period, it may amount to transfer the Applicant under the guise of temporary deployment period, which is not permissible. This being the position, it would be appropriate that the period of temporary deployment should be terminated by issuance appropriate order by Respondent No.1 within reasonable time.*

13. *The present O.A. is, therefore, needs to be disposed of with suitable direction. The Applicant is required to be reposted on his original post. After his reposting, the Respondent No.1 may pass appropriate transfer order, if choose to do so, in accordance to law. However, it should not be construed that the Tribunal has passed any such*

order for transfer and it is left to the Respondents. Hence, the following order.

ORDER

- (A) The Original Application is allowed partly.*
- (B) The Respondent No.1 is directed to repost the Applicant within a month from today and thereafter he may pass further appropriate transfer order, if warranted and deems fit in accordance to law.*
- (C) No order as to costs.”*

15. In the abovesaid observations, if the facts of the present case are considered, the facts of the said case and present case in hand are of similar nature to great extent. In the case in hand also, the impugned order is termed as temporary order till further orders.

16. In the affidavit-in-reply it is specifically mentioned that the respondent was to consider the position as regard the impugned transfer order in General Transfer of the year 2020. However, nothing is placed on record to substantiate the same. In such circumstances, nature of impugned order is uncertain, which is not recognized in any manner under Section 22N of the

Maharashtra Police Act, 1951 which deals with the aspect of transfer.

17. The documents which are placed on record in this case may show that the immediate deployment of the applicant at Nandurbar Railway Police Station was appropriate in the background of the material found against the applicant. However, the said situation cannot be allowed to be continued for indefinite period at the mercy of the respondent. If that is so, temporary development for uncertain period is not at all contemplated. Hence, in my considered opinion, the present matter is also required to be dealt with in the manner in which the case of O.A.No.696/2019 was dealt with. The respondent is having every right to deal with transfer of the applicant, if required in accordance with law. However, it should not be construed that the Tribunal has passed any such order for transfer and it is left to the Respondent. But for that purpose, suitable directions will have to be given to the respondent to repost the applicant on his earlier post as the temporary deployment cannot be recognized by this Tribunal for indefinite period as the same is not contemplated under Section 22N of Maharashtra Police Act, 1951. In the circumstances, in my

considered opinion, this application can be disposed of by giving suitable directions to the respondent as follows:

O R D E R

The Original Application is partly allowed in following terms:-

- (i) The respondent is directed to repost the applicant within a month from today and thereafter, the respondent may pass further necessary transfer order, if warranted and deems fit in accordance to law.
- (ii) No order as to costs.

(V.D. DONGRE)
MEMBER (J)

Place:- Aurangabad

Date :- 04.01.2022

SAS. O.A.No.851/2019. Transfer