

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.95 OF 2021
(Subject:- Transfer)**

DISTRICT:-AHMEDNAGAR

Nitin Surendra Shelar,)
Age:- 39 years, Occ. Service (Police Constable),)
R/o. Belapur, Ashoka Vihar,)
Tq. Shrirampur Dist. Ahmednagar.)
Pin. 413715.)....**Applicant**

V E R S U S

- 1. The State of Maharashtra,**)
Through its Principal Secretary,)
Home Department,)
Mantralaya, Mumbai-32.)
- 2. The Superintendent of Police,**)
Ahmednagar, Dist. Ahmednagar)
- 3. The Police Inspector,**)
Shirdi Police Station, Shirdi, Tq. Rahata,)
Dist. Ahmednagar.)...**Respondents**

APPEARANCE : Shri V.B. Wagh, learned Advocate for
the Applicant.

: Shri V.R. Bhumkar, learned Presenting
Officer for the Respondents.

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

DATE : **15.12.2021.**

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 29.12.2020 (Annex. 'A-1') issued by the respondent No.2 i.e. Superintendent of Police, Ahmednagar, Dist. Ahmednagar, thereby transferring the applicant on temporary basis till further orders from Shirdi Police Station to Police Head Quarters, Ahmednagar.

2. The applicant came to be recruited in the Police Department as Police Constable on 09.01.2012. He came to be transferred at Shirdi Police Station on 25.06.2017 and since then, he is working there till the issuance of impugned transfer order dated 29.12.2020. Before completing normal tenure of five years, he is being transferred. The Applicant by submitting various applications thereafter in January and February, 2021 sought information about reasons behind his transfer. However, no information was furnished to him. He realized that on the default report submitted by the respondent No.3 i.e Police Inspector, Shirdi Police Station, he has been transferred illegally without following principles of natural justice.

3. Due to the said impugned transfer order, his family is disturbed. The Applicant contended that he is working in the Police Department honestly and there is no complaint regarding his functioning. Default

report seems to have been submitted without making preliminary enquiry as provided in the circular dated 08.11.2017 issued by Special Inspector General of Police. Hence, the impugned transfer order is not tenable. Moreover, it is not issued by competent transferring authority. Hence it is liable to be quashed and set aside.

4. Affidavit-in-reply on behalf of respondent Nos.1 to 3 is filed by Shri Monoj Govind Patil, Superintendent of Police, Ahmednagar stating that the applicant has not been transferred but he is temporarily being attached to Police Head Quarters, Ahmednagar on administrative ground pending enquiry against him. The applicant has intentionally proceeded on medical leave on 06.01.2021 and has opted not to resume at newly attached place purposely. In fact, the applicant has no vested right to get posting at a particular place or choose to serve at a particular place for a particular time. It is found that the applicant was playing dual role in Shirdi Police Station. He is having close relation with criminals. Moreover, the applicant has close relations with the culprits involved in Shirdi Police Station in CR No.748/2020 registered under Section 302 of IPC. Accordingly, in order to avoid further complications, the applicant has been shifted temporarily pending preliminary enquiry being conducted by the Sub Divisional Police Officer, Shirdi Division. Annexures 'R-1' and 'R-2' are documents in that regard which include default report dated 28.11.2020 submitted by the respondent No.3 i.e. Police Inspector,

Shirdi Police Station, Shirdi. In view of same, the Original Application is liable to be dismissed.

5. The applicant has filed his affidavit-in-rejoinder and has denied the adverse contentions raised therein contending that alleged preliminary enquiry is ordered post default report dated 28.11.2020 of the respondent No.3 i.e. Police Inspector, Shirdi Police Station, Shirdi and impugned transfer order is dated 29.12.2020 and therefore, the same cannot be legalized. The illegal order of transfer is issued by the respondent No.2 i.e. Superintendent of Police, Ahmednagar without any authority.

6. It is further submitted that the applicant has appeared in the preliminary enquiry being conducted against him by Sub Divisional Police Officer, Ahmednagar and has explained the situation.

7. I have heard the arguments advanced by the learned Advocate for the applicant on one hand and learned P.O. for the respondents on other hand.

8. Learned Advocate for the applicant submitted that the impugned transfer order of the applicant is in blatant contravention of the concerned provisions of Maharashtra Police Act and mainly Section 22N (2) and Section 22J-2 of Maharashtra Police Act.

9. He further submitted that the respondent No.2 i.e. Superintendent of Police, Ahmednagar is not competent transferring

authority of the applicant and on that ground alone, the impugned transfer order dated 29.12.2012 (Annex. 'A-1') is liable to be quashed and set aside. According to him, the competent transferring authority of the Police Constabulary is Police Establishment Board at District Level. He further submitted that nothing is produced on record to substantiate the contents of the alleged default report dated 28.11.2020 submitted by the respondent No.3 to the respondent No.2. There is nothing on record to show that the transfer is made with the concurrence of Police Establishment Board at District Level.

10. To substantiate the abovesaid submissions, learned Advocate for the applicant has placed reliance on following decisions of Co-ordinate bench at principal seat, Mumbai in similarly situated O.As. as follows:-

- (i) **O.A.No.518 of 2020 in the matter of Amol V. Bhise Vs. The State of Maharashtra & Ors. datd 25.08.2021.**
- (ii) **O.A.No.864 of 2019 in the matter of Shri Ajinkya Dilip Daundkar & Ors. Vs. The Superintendent of Police, Pune (Rural) & Ors. dated 15.03.2021; and**
- (iii) **O.A.No.192 of 2020 in the matter of Milind Ashok Bhamre Vs. The Superintendent of Police dated 17.02.2021.**

11. Per contra, learned Presenting Officer representing the respondents strenuously urged before me that by impugned order dated 29.12.2020, the applicant has been temporarily attached to Police Head Quarters, Ahmednagar and is being shifted from Police Station, Shirdi in order to maintain law and order and the same is temporary arrangement and not a transfer.

12. Moreover, according to him further the impugned order is rightly passed in the background of the default report dated 28.11.2020 (page no.35 of P.B.) submitted by respondent No.3 i.e. Police Inspector, Shirdi Police Station, Shirdi to the respondent No.2 i.e. Superintendent of Police, Ahmednagar from which it is evident that the applicant is having the relation with culprits who are involved in the murder matter registered at CR No.748/2020 u/s 302 IPC at Shirdi Police Station and in the background of the allegation that the applicant having such relation with other culprits also.

13. After having considered the rival submissions, pleadings and documents on record, at the outset it is evident that the impugned order dated 29.12.2020 (Annex. 'A-1') is issued by the Respondent No.2 i.e. Superintendent of Police, Ahmednagar. The said order mentions that the applicant has been temporarily attached to Police Head Quarters, Ahmednagar from Shirdi Police Station in view of default report and in order to maintain the law and order.

14. No doubt, the said order does not specifically mention that the applicant is transferred, but the overall effect of the said order is that the applicant has been transferred from Shirdi Police Station to Police Head Quarters, Ahmednagar. The said order is having the effect till further orders. No specific period is mentioned. In view of same, the said order amounts to transfer order. If it is so, then it is to be governed by the relevant provisions of Maharashtra Police Act.

15. The applicant is working as Police Constable. Hence, he falls under the category of constabulary. As per the provision of Sub-Section 2(4A-1) of the Maharashtra Police Act, the constabulary means Police Constable, Police Naik, Police Head Constable and Assistant Sub-Inspector.

16. In view of the provisions of Section 22N (1) (b) of the said Act, the normal tenure for Police Constabulary is of five years at one place of posting. In the case in hand, the applicant has been transferred before completion of five years tenure. Hence, it is necessarily mid-term and mid-tenure transfer order.

17. Section 22-J-2 lays down functioning of Police Establishment Board at District Level which is follows:-

“22J-2. Functions of police Establishment Board at District Level

The Police Establishment Board at District Level shall perform the following functions, namely:-

(a) The Board shall decide all transfers, posting of Police Personnel to the rank of Police Inspector within the District Police Force.

(b) The Board shall be authorized to make appropriate recommendations to the Police Establishment Board No.2 regarding the posting and transfers out of the District.”

Explanation- For the purposes of this section, the expression “Police Personnel” means a Police Personnel to the rank of Police Inspector.

18. In this case, nothing is placed on record by the respondents to show that the impugned order is issued by or with the concurrence of the said Police Establishment Board at District Level. The impugned order is issued independently by Respondent No.2 i.e. Superintendent of Police, Ahmednagar under the grab of default report and to maintain law and order.

19. Section 22N(2) deals with the criteria of mid-term and mid-tenure order which is as follows:-

“(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.”

20. If the impugned order is considered at the threshold in the background of Sub-Section 22N(2) of Maharashtra Police Act, it cannot be termed as the order is issued under exceptional circumstances or in public interest and on account of administrative exigencies. It is so because nothing is produced on record by the respondents to prima-facie show that there were verified complaints on record against the applicant. In fact, enquiry is ordered after issuance of transfer order. Moreover, the order is issued by the respondent No.2

i.e. Superintendent of Police, Ahmednagar as temporary deployment. It is not recommended under any of the provisions of Maharashtra Police Act. There is no provision of law to show that the power is vested in Superintendent of Police for deploying the Police Officers from one place to another place for specific period and more particularly till further orders.

21. In view of same, from any angle, if the impugned order dated 29.12.2020 (Annex. 'A-1') is examined, it is not justifiable. In fact, it is against and in contravention of concerned provisions of Maharashtra Police Act as discussed hereinabove.

22. Decisions of co-ordinate Benches relied upon by the learned Advocate for the applicant would show that the Principal Bench discussed the cases therein pertaining to Police Officials governed under provisions of Maharashtra Police Act would be applicable in this case and it is to be held that the impugned order dated 29.12.2020 (Annex. 'A-1') issued by the respondent No.2 i.e. Superintendent of Police, Ahmednagar is not at all sustainable in the eyes of law. It suffers from illegality being issued by respondent No.2 i.e. Superintendent of Police, Ahmednagar without any legal authority.

23. In the facts and circumstances, the impugned transfer order is liable to be quashed and set aside. Hence, I proceed to pass the following order:-

O R D E R

- (A) The Original Application is allowed.
- (B) The impugned transfer order dated 29.12.2020 (Annex. 'A-1') issued by the respondent No.2 i.e. Superintendent of Police, Ahmednagar is quashed and set aside.
- (C) The respondents are directed to repost the applicant on his earlier post within the period of one month from the date of this order.
- (D) No order as to costs.

(V.D. DONGRE)
MEMBER (J)

Place:- Aurangabad
Date :- 15.12.2021

SAS. O.A.No.95/2021. Transfer