

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 218/2016

Pratiksha D/o Mahadeorao Damke,
Aged about 31 years,
R/o Flat No. 203, Gurukrupa Apartment,
Sujata Nagar, Nagpur. -----**Applicant.**

Versus

1. The State of Maharashtra,
Through its Secretary,
Home Deptt.
Mantralaya, Mumbai.
2. The Director General of Police,
Office at Near Regal Theatre Colaba, Mumbai.
3. The Superintendent of Police (Railway),
Nagpur. ----- **Respondents.**

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1. Shri R.M. Bhangde, Advocate for the applicant.
 2. Shri A.P. Potnis, Presenting Officer for the Respondents.
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CORAM : B. Majumdar : Vice Chairman
DATE : 16th June, 2016

ORDER

The applicant, is a Police Constable. She has filed the O.A. aggrieved with an order vide which she has been transferred to the Railway Police Station, Itwari. The applicant was posted at the Railway Police Station, Nagpur from 3/6/2014. Vide order dtd. 28/3/2016 she has been transferred to the Railway Police Station, Itwari. Her submission is that the impugned order of transfer was issued when she had not completed her normal tenure of 5 years. Hence it is a mid-term order. For mid-term orders, as per the provisions of Section 22 (N) of the amended Maharashtra Police Act, 1951, such an order could have been issued only by the District Level Police Establishment Board. Hence R/3 was not empowered to issue the order. She further submits that the transfer is motivated being based on some false complaints made against her by two APIs during her duty at Nashik in August, 2015. She was already given the punishment of 'reprimand' vide order dtd. 28/3/2016 issued by R/3. On the same date the



impugned order has been issued. Thus the order is clearly by way of a punishment and stigmatic. For this R/3 was required to follow the procedure for grant of punishment.

2. The R/3-S.P. (Railways) in his affidavit in reply submits that the applicant was deputed on duty at Kumbh Mela, Nashik when two lady Police Constables made a complaint against her to the API, Mahila Cell, Railway Police, Nagpur that the applicant had maligned the reputation of those two women police constable that by alleging that they were caught by the Police at Nashik in a lodge, and she had also abused them in filthy language. The API, after recording the statement of all the 3 women constables as above, had submitted a confidential report. After going through this report, R/3 had come to the conclusion that the applicant is arrogant , disobedient and had misbehaved with her colleagues. She also did not deliberately follow the orders of her superiors. Hence the applicant was transferred immediately from the Railway Police Station, Nagpur to the Railway Police Station, Itwari as per Section 22 (N) of the

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amended Maharashtra Police Act. He further submits that it is not a case of transfer but for the good administration and smooth functioning of the Railway Police Office and maintenance of decorum.


3. Shri R.M. Bhangde, Id. Counsel for the applicant reiterated the submissions of the applicant in the O.A. He submitted that shifting of the applicant from one Police Station to another within the city of Nagpur is clearly a case of transfer. In **Sanjeev Bhagwanrao Kokil Vs State of Maharashtra** [2013 (1) All M.R.40] hon'ble the High Court had held that such local shifting amounts to transfer. Thus, R/3 has erred in assuming that the impugned order is not a order of transfer and hence as the applicant is shifted mid-term, the respondents are required to follow the procedure as laid down in Section 22 (N) of the amended Maharashtra Police Act.

4. Shri A.P. Potnis, Id. P.O. for the respondents reiterated the submissions made by R/3 in his affidavit-in-reply.

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5. I Have considered the submissions made on both the sides. The transfer of police personnel is governed by the provisions of Section 22(N) of the amended Maharashtra Police Act, 1951. As per Section 22 (N)(1)(b), the normal tenure for the members of the Police Constabulary shall be of 5 years at one place of posting. Hence for the applicant, her normal tenure is of 5 years. As she has been transferred before completion of the normal tenure, this is a case of mid-term transfer. The R/3 in his affidavit-in-reply has submitted that the applicant was transferred on the basis of complaints against her which show that she was arrogant, disobedient and misbehaved with her colleagues. As per Section 22 (N)(2) if the mid-term transfer is on grounds of public interest and on account of administrative exigencies, the Competent Authority shall be the Police Establishment Board at the District Level for transfer within the district, of Police Personnel up to the rank of PI. The proviso to the sub-section states that in case of any serious complaint, irregularity, law and order problem, the highest competent authority can make the transfer of any

Police Personnel without any recommendations of the concerned Establishment Board (emphasis supplied). As undisputedly the applicant's transfer is on the grounds of serious complaints, the above proviso will apply in her case. This means that her transfer could be ordered only by the highest Competent Authority without referring the matter to the Police Establishment Board. The proviso also states that this condition will apply to any Police Personnel, and hence it would also apply in the case of a Police Constable like the applicant. As to who is deemed to be the highest Competent Authority, in my view, this will be from among the authorities which are empowered to make a mid-term transfer of Police Personnel at different levels. In the list of the "competent authorities" provided under "Explanation" under sub-rule (2), the highest ranking authority is the hon'ble Chief Minister. Hence a proper interpretation of the above proviso is that as the applicant was transferred on the basis of serious complaints, this could not have been done without approval of the Chief Minister. From the reply filed by R/3 as also the



record placed before me, I find that this procedure was certainly not followed while issuing the impugned order. Hence I find that the impugned order is not sustainable and requires to be quashed. The O.A. therefore stands disposed of in terms of the following orders :-

- a) The impugned order dtd. 28/3/2016 is quashed and set aside.
- b) The respondents are however at liberty to transfer the applicant after following the due procedure as laid down in Section 22(N) of the amended Maharashtra Police Act.
- c) No order as to costs.

Sd/-

(B. Majumdar)
Vice-Chairman.

Skt.