

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NOS.119 & 120 OF 2020

DISTRICT : SANGLI

ORIGINAL APPLICATION NO.119 OF 2020

Shri Nitin Bajarang More.)
Age : 32 Yrs., Occu.: Service,)
R/at Rajgad Apartment, Room No.4,)
New Police Line, Vishrambag,)
Sangli – 416 415.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Addl. Chief Secretary,)
Home Department, Mantralaya,)
Mumbai – 400 032.)
2. The Superintendent of Police.)
204, National Highway, Sangli-Miraj)
Rd., Saraswati Nagar, Vishrambag,)
Sangli – 416 416.)...**Respondents**

AND

ORIGINAL APPLICATION NO.120 OF 2020

Shri Pandit Ananda Patil.)
Age : 30 Yrs., Occu.: Service,)
R/at Post Kawlapur, Kondke Mala,)
Near Government Well, Tal.: Miraj,)
District : Sangli – 416 306.)...**Applicant**

Versus

1. The State of Maharashtra & Anr.)...**Respondents**

Mr. S.S. Dere, Advocate for Applicant.

Mr. A.J. Chougule, Presenting Officer for Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 10.02.2021

JUDGMENT

1. The Applicants have challenged the transfer order dated 26.12.2019 whereby they were transferred from MIDC, Kupwad Police Station to Police Station Aatpadi and Islampur respectively, invoking jurisdiction of this Tribunal under Section 19 of Administrative Tribunals Act, 1985.

2. Shortly stated facts are as follows :-

The Applicants are serving in the cadre of Police Constable on the establishment of Respondent No.2 – Superintendent of Police, Sangli. The Applicant in O.A.119/2020 (N.B. More) was posted at MIDC Police Station by order dated 10.06.2015 whereas the Applicant in O.A.No.120/2020 (P.A. Patil) was posted at MIDC Police Station by order dated 13.03.2018. They being in the cadre of Police Constable are entitled to five years' tenure in terms of Section 22N(1)(b) of Maharashtra Police Act. However, they were transferred by impugned order dated 26.12.2019 before completion of normal tenure of five years. The Respondent No.2 transferred them mid-term and mid-tenure, invoking Section 22N(2) of Maharashtra Police Act attributing misconduct to them. The Applicants have, therefore, challenged the impugned transfer order *inter-alia* contending that they were transferred on their alleged involvement in leaking sensitive information of Police Station to the

Reporters of Newspapers. Though in preliminary enquiry, there is no such positive and specific conclusion of their involvement, they were transferred only on speculation.

3. Shri S.S. Dere, learned Advocate for the Applicant sought to assail the impugned order on the ground that in preliminary enquiry conducted by Shri Tashildar, Police Inspector, Miraj Police Station, all that, he observed about the possibility of the Applicants in leaking the information to Reporters and on the basis of this possibility only, the Applicants are transferred mid-term and mid-tenure. He further contends that there is no proper compliance of Circular dated 08.11.2017 issued by Special Inspector General and Director General of Police. Thus, according to him, there was no sufficient or tangible material to attribute the misconduct to the Applicants, and therefore, the transfer based on such report is unsustainable in law.

4. Per contra, Shri A.J. Chougule, learned Presenting Officer submitted that the Applicants were found *prima-facie* involved in leaking certain information to Reporters on the basis of which, one news was published in Newspaper viz. Dainik Pudhari dated 18.11.2019 under the caption “गुंडाच्या खुनात पोलीसाचा सहभाग” which had maligned the image of police in public. He has further pointed out that the preliminary enquiry was conducted by Shri Tashildar, P.I, Miraj Police Station and submitted report dated 25.11.2019 to Respondent No.2. The preliminary enquiry report was placed before Police Establishment Board (PEB) headed by Respondent No.2 in its meeting date 24.12.2019 and in the light of preliminary enquiry report, the PEB unanimously resolved to transfer the Applicant on administrative exigency, invoking Section 22N(2) of Maharashtra Police Act. He, therefore, submits that having regard to the facts and circumstances of the case, interference by the Tribunal is not warranted.

5. Indisputably, the Applicants have not completed normal tenure of five years at MIDC Police Station and the transfer is mid-term as well as mid-tenure. The Respondent No.2 invoked Section 22N(2) of Maharashtra Police Act, which *inter-alia* provides that in exceptional case and on account of administrative exigency, the competent authority can transfer Police Personnel mid-term.

6. Needless to mention that transfer is an incident of service and Government servant can be transferred from one post to another post for administrative exigency or to overcome certain exigency of situation. The Tribunal should not interfere in transfer unless it is in express contravention of provisions of law or *mala fide*. Where reason of transfer is administrative in nature and competent authority acts *bonafide*, the Tribunal should not interfere in such administrative business. Undoubtedly, where transfer is under the guise of punishment, the interference by judicial forum is must. Where transfer is questioned as *malafide* exercise of power, it must be specifically pleaded and established reasonably.

7. Now turning to the facts of the present case, there was incident of murder of Shreyash Kawathekar on 04.11.2019 at Kupwad and accused viz. Rohit Kadam and other allegedly committed his murder. In respect of that incident, Crime No.225/2019 for the offence under Sections 302 and 201 of Indian Penal Code was registered. It is in respect of that crime, one news was published in Dainik Pudhari dated 18.11.2019 under the caption "गुंडाच्या खुनात पोलीसाचा सहभाग". On the basis of that news, other newspapers also published the said news in Dainik Tarun Bharat, Dainik Sakal, Dainik Punyanagari, etc. Obviously, the said news raised eyebrows, as there were widespread rumors in public about involvement of Police in the crime and thereby image of Police was maligned. The Respondent No.2, therefore, directed Shri Tashildar, P.I, Miraj Police Station to conduct preliminary enquiry and submit a report. Accordingly, he has recorded statements of as much as 19 witnesses

including the Applicants, other Police Constables, Newspaper Reporters, etc. On completion of enquiry, he submitted detail report that the Applicants belong to group of Police Hawaldar Pravin Yadav and he opined that the Applicants are possibly involved in giving such news to the Reporters. In computing part of preliminary report, he stated as under :-

“नमूद बातमीमध्ये कुपवाड एम.आय.डी.सी. पोलीस ठाणेकडील अधिकारी किंवा कर्मचारी यांचा सहभाग आहे कीवा कसे याबाबत चौकशी केली आहे. पो.कॉ./२००५ मोरे, पो.कॉ./१९९६ गायकवाड, पो.कॉ./९६५/पाटील, पो.हवा/१२१८ वाघ, स.पो.फौ.भगवान घेरडे, पो.हवा./२६५ शिंदे यांचेकडे केले चौकशीमध्ये त्यांचे कुपवाड स्थानिक पत्रकार दैनिक पुढारी मारे, दैनिक तरुण भारत, दरीकांत माळी, एस.सी.एन.वार्ताहर अभिजीत परीट व दैनिक लोकमत पत्रकार सरगर यांचेशी संबंध असल्याचे सांगत आहे. तसेच नमूद पोलीस ठाणेस नेमणूकीस व सध्या निलंबित असलेले पो. हवा/५२ प्रवीण यादव यांचेशी संबंध असल्याचे ते सांगत आहे.

तसेच कुपवाड पोलीस ठाणेकडील पो.कॉ./२२८४ ठोकळ, पो.उपनिरीक्षक राजू श्रीकांत अन्नछत्रे,पो.हवा./७६९ अजय माने, पो.हवा/६०५ जमादार व प्रधारी अधिकारी यांचेकडे चौकशी केली असता त्यांचे सांगणे की, पो.हवा/५२ प्रवीण यादव हे पोलीस ठाणेस नेमणूकीस असताना हजेरी मेजर विभागाकडे काम पाहत होते. हजेरी विभागाकडे काम पाहत असताना स्वतःच्या मनप्रमाणे हुकुमशाही धोरणाप्रमाणे स्टाफला नोकरी लावणे तसेच पोलिस ठाणेस गट तट तयार करणे, स्वतःचे गटांमध्ये पो. कॉ./२००५ मोरे, पो.कॉ./१९९६ गायकवाड, पो.कॉ./९६५/पाटील, पो.हवा/१२१८ वाघ, यांना सामील करून त्यांना कसल्याही प्रकारच्या ड्युट्या न नेमता इतर कर्मचा-यांसोबत अरेरावीची भाषा वापरणे, अधिकारी यांचेशी उदधट वर्तन करणे, त्यांना राजकीय लोकांची भिती दाखवणे. सध्या निलंबित असताना देखील कुपवाड पोलीस ठाणेस जावून तेथील गोपनीय माहिती हि त्यांचे वर त्यांचे गटात असलेले कर्मचारी यांचेकडून घेवून पोलीस ठाणेची बदनामी व्हावी याकरीता ती दैनिकामध्ये प्रसिध्दी करण्याचे कृत्य करीत आहे. तसेच पो.कॉ./१९९६ गायकवाड हे स्टेशन डायरीचे उतारे निलंबित पो.हवा/५२ प्रवीण यादव यांना व्हाटसअप द्वारे देवून गोपनीयतेचा भंग करीत असल्याचे स्पष्ट दिसून येते. यावरून नमूद कर्मचारी यांचे पत्रकार यांचेशी लागेबंध असल्याचे व पोलीस ठाणेतील अंतर्गत वादामुळेच त्यांनी सदरची बातमी पत्रकार यांचेकडे प्रसिध्द करण्यासाठी दिली असावी अशी शक्यता वाटते असे चौकशी दरम्यान तपासले पोलीस अधिकारी व कर्मचारी यांचे जबाबवरून दिसून येते.

पोलिस ठाणे अधिकारी श्री.उबाळे स.पो.नि. यांचेकडे केले चौकशीमध्ये पो.कॉ./२००५ मोरे, पो.कॉ./१९९६ गायकवाड, पो. कॉ./९६५/पाटील, पो.हवा/१२१८ वाघ, हे निलंबित पो.हवा/५२ प्रवीण यादव यांचे जवळचे असल्याचे व ते इतर पोलिसांचे पासून अलिप्त राहत असल्याचे व पोलिस ठाणे कडील प्रमाणित काम करणारे अधिकारी व कर्मचारी यांचे ख्रचीकरण व्हावे, व पोलिस ठाणेची प्रतिमा मलिन व्हावी करीता लोकांना व पत्रकारांना अंतर्गत गोपनीय माहिती देत असल्याची शक्यता असावी असे त्यांचे मत आहे. दिनांक १८.११.१९ रोजी दैनिक पुढारीमध्ये प्रसिध्द झालेली बातमी देखील पो.कॉ./२००५ मोरे, पो. कॉ./१९९६ गायकवाड, पो.कॉ./९६५/पाटील, पो.हवा/१२१८ वाघ यांनीच पो.हवा/५२ प्रवीण यादव यांचे मदतीने दैनिकामध्ये प्रसिध्द केली असावी असे प्रभारी अधिकारी यांचे अधिकारी/कर्मचारी यांचे निरीक्षक दरम्यान दिसून आले आहे. तसेच यापूर्वी पोलीस ठाणेत घडलेल्या गोष्टी देखील त्यांनी दैनिकामध्ये प्रसिध्द केलेल्या असल्याची शक्यता आहे.

तरी निलंबित पो.हवा/५२ प्रवीण यादव यांचे कुपवाड पोलिस ठाणेस नेमणूकीस असलेले पो.कॉ./२००५ नितिन मोरे, पो.कॉ./१९९६ गायकवाड, पो.कॉ./९६५/पंडीत पाटील, पो.हवा/१२१८ विश्वास वाघ हयांना हाताशी धरून दि.१८.११.१९ रोजीची बातमी दैनिक पुढारीमध्ये प्रसिध्द करून पोलिस खात्याची प्रतिमा मलिन होईल असे कृत्य केले असण्याची शक्यता आहे. तरी नमूद पोलिस कर्मचारी यांचेवरती योग्य ती कायदेशीर कारवाई होणेस विनंती आहे.”

8. The preliminary enquiry report was accordingly placed before PEB in its meeting dated 24.12.2019 presided over by Respondent No.2 and the PEB invoked powers under Section 22N(2) of Maharashtra Police Act and unanimously resolved to transfer the Applicants amongst others. In minutes, the PEB recorded as under :-

“३.४ उक्त प्रमाणे १) पोलीस हवालदार/१२१८ विश्वास यशवंत वाघ २) पोलीस शिपाई / २००५ नितिन बजरंग मोरे ३) पोलीस शिपाई /१९९६ महेश बाळासो गायकवाड ४) पोलिस शिपाई / ९६५ पंडित आनंदा पाटील सर्व नेमणूक

एमआयडीसी कुपवाड पोलीस ठाणे यांना हाताशी धरून निलंबित पोलीस हवालदार / ५२ प्रविण यादव यांनी दिनांक १८.११.२०१९ रोजी दैनिक पुढारी मध्ये “**गुंडाच्या खुनात पोलीसाचा सहभाग**” अशी बातमी प्रसिध्द करून पोलीस खात्याची प्रतिमा मलिन होईल असे कृत्य केलेची बाब प्राथमिक चौकशीत दिसून आली आहे.

उक्त प्रमाणे एमआयडीसी पोलीस ठाणेकडील नमूद ४ पोलीस कर्मचारी यांचेविरुद्ध प्राथमिक चौकशीमध्ये सकृतदर्शना त्यांची वर्तणूक प्रतिकूल आढळल्याची बाब निष्पन्न झालेचे अभिलेख आस्थापना मंडळामधील सर्व सदस्यांचे निदर्शनास आणण्यात आले. सदर कर्मचारी यांचेविरुद्धची प्राथमिक चौकशी अहवाल व त्यासोबतची कागदपत्रे अवलोकन केली असता त्यांची वर्तणूक प्रतिकूल आढळली व त्याशिवाय महाराष्ट्र पोलीस अधिनियम, १९५१ मधील कलम २२ न (२) मधील निकष पूर्ण करीत असलेमुळे त्यांना एमआयडीसी कुपवाड पोलीस ठाणे येथे कर्तव्यार्थ ठेवणे योग्य वाटत नसल्याचे आस्थापना मंडळातील सर्व सदस्यांची खात्री झाली. उक्त ४ पोलीस कर्मचारी पैकी पोलीस हवालदार / १२१८ विश्वास यशवंत वाघ यांची नेमणूकीच्या ठिकाणी ५ वर्ष सेवा पूर्ण झालेने त्यांची एमआयडीसी कुपवाड पोलीस ठाणे ते उमदी पोलीस ठाणे अशी प्रशासकीय कारणास्तव बदली दिनांक १८.११.२०१९ रोजीच्या आस्थापना मंडळ बैठकीत करण्यात आली आहे. उर्वरीत १) पोलीस शिपाई/२००५ नितिन बजरंग मोरे यांची एमआयडीसी कुपवाड पोलीस ठाणे ते आटपाडी पोलीस ठाणे २) पोलीस शिपाई/१९९६ महेश बाहासो गायकवाड यांची एमआयडीसी कुपवाड पोलीस ठाणे ते विटा पोलीस ठाणे ३) पोलीस शिपाई /९६५ पंडित आनंदा पाटील यांची एमआयडीसी कुपवाड पोलीस ठाणे ते इस्लामपूर पोलीस ठाणे अशी महाराष्ट्र पोलीस अधिनियम १९५१ मधील कलम २२ न (२) नुसार प्रशासनिक निकडीनुसार मुदतपूर्व बदली करण्यात यावी असा निर्णय जिल्हा आस्थापना मंडळाने घेतला आहे.”

9. Shri S.S. Dere, learned Advocate for the Applicant emphasized that in absence of specific positive finding about the involvement of the Applicant for leaking information to Reporters, they cannot be transferred only on possibility of involvement as mentioned in enquiry report. Thus, according to him, it is only on suspicion, the Applicants are transferred, and therefore, it is unsustainable in law.

10. As stated above, the matter of transfer of a Government servant exclusively fall within the domain of competent authority. True, Maharashtra Police Act provides for five years tenure of Police Constable at one posting but Section 22N(2) of Maharashtra Police Act empowers PEB to transfer Police Personnel mid-term in exceptional cases, in public interest and on account of administrative exigencies. In the present case, the PEB constituted at District level as provided under Section 22J(1) of Maharashtra Police Act is competent authority. It was also notified in official gazette as contemplated in law.

11. Now, the question is whether preliminary enquiry report could be said sufficient material to invoke Section 22N(2) of Maharashtra Police Act or any *malafides* can be attributed to the impugned transfer order. The perusal of preliminary report as well as documents placed on record demonstrates that the Preliminary Enquiry Officer has also recorded the statement of the Applicants. They have denied to have given any such

information to Reporters. As per Circular dated 08.11.2017, if the transfer is necessitated on account of certain misconduct, then preliminary enquiry is required to be made including recording statement of concerned employee. It further provides that, if in preliminary enquiry, *prima-facie*, misconduct is made out, the report is required to be placed before the PEB for appropriate decision. Suffice to say, in the present case, the procedure as contemplated in Circular dated 08.11.2017 has been complied with.

12. Thus, the perusal of minutes of PEB reveals that PEB was satisfied with the preliminary report and there was *prima-facie* material attributing certain lapses to the Applicants and on the basis of it, the Applicants were transferred. As such, the Applicants were transferred under the caption of 'administrative exigency' to overcome the situation, since the news published in newspapers had maligned the image of Police in public. If the competent authority on the basis of preliminary report or other inputs they have satisfied about the existence of reasons to transfer the Applicants, such satisfaction of PEB can hardly be questioned unless it is shown tainted with *malafides*. In the present case, no such malice is attributed to Respondent No.2. Needless to mention that existence of reasons is a matter capable of objective verification, whereas satisfaction as to reason is a matter of subjective satisfaction. Once the test of existence is satisfied subjectivity of satisfaction cannot be gone into by the Tribunal unless it is a case of *malafide* exercise of power, the Tribunal cannot substitute its opinion for that of competent authority i.e. PEB.

13. Indeed, in transfer matter of a Government servant, whether there was any misconduct is a question which can be gone into in departmental proceedings and for the purpose of effecting a transfer, the question of holding an elaborate enquiry to find out whether there was misconduct beyond reasonable doubt is unnecessary and what is required is the *prima-facie* satisfaction of the competent authority about

the alleged misconduct of a Government servant. The question whether Applicants were required to be transferred to different Police Stations on prima-facie satisfaction is a matter for the executive to consider depending upon the administrative urgency as well as the extent of solution for the problem created by the concerned Government servant and faced by the administration. It is not for the Court or Tribunal to interfere therein unless *malafides* are established. In the present case, there is no such *malafides* attributed to Respondent No.2.

14. Suffice to say, once the competent authority is satisfied on preponderance of probability, the proof of the alleged occurrence beyond reasonable doubt alike Criminal Case should not be insisted. In other words, the existence of situation and preponderance of probability about the default of a Government servant would be the guiding principle in transfer matter. The Police Force being disciplined Force, if transfer of the Applicants were found necessitated in view of their *prima-facie* involvement in giving such news, which adversely affected the image of Police in public, then such transfer should not be interfered with by the Tribunal.

15. The necessary corollary of aforesaid discussion leads me to conclude that the challenge to the transfer order is devoid of merit and O.A. deserves to be dismissed. Hence, the following order.

ORDER

The Original Applications are dismissed with no order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai
Date : 10.02.2021
Dictation taken by :
S.K. Wamanse.

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