

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.59 of 2020

District : MUMBAI

Shri Kishor B. Jagtap)
Aged 55 years, Occ : Incharge Senior Police,)
Inspector, Boisar Police Station, now transferred)
To Control Room, Palghar.)
R/at : 1/32, Police Officers Quarters, Carter)
Road, Bandra (W), Mumbai 50.)...**Applicant**

Versus

1. The Superintendent of Police, Palghar)
O/at. Central Administrative Building,)
BIDCO Road, Palghar (W).)
2. Shri Vishwas V. Valvi, Sub Divisional)
Police Officer, Boisar Division,)
Dist. Palghar.) ...**Respondents**

Shri Arvind V. Bandiwadekar, learned Advocate for the Applicant.
Smt. Archana B. K., learned Presenting Officer for the Respondent.

CORAM : Shri A.P. Kurhekar, Member-J

DATE : 29.01.2021

J U D G M E N T

The Applicant has challenged the transfer order dated 14.01.2020, whereby he was transferred from the post of Police Inspector, Boisar Police Station, District Palghar to Control Room, Palghar invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

2. The background of the matter leading to the impugned transfer order is as under:-

(a) In inter district transfer of 2018, the Applicant was transferred on the establishment of Respondent No.1-Superintendent of Police, Palghar by order dated 30.06.2018. He was given temporary posting at Control Room, Palghar.

(b) Thereafter by order dated 10.09.2018 passed by Respondent No.1, the Applicant was temporarily posted on administrative ground as Police Inspector, Boisar Police Station, District Palghar (Page 23 of PB).

(c) Again the Respondent No.1 by order dated 28.02.2019 invoking Section 22N(2) of Maharashtra Police Act temporarily posted the Applicant back to Control Room, Palghar (Page 24 of PB).

(d) The Applicant had challenged the temporary deputation order dated 28.02.2019 by filing O.A.No.696/2019 before this Tribunal.

(e) O.A. No.696/2019 was allowed by the Tribunal on 15.10.2019 with the findings that temporary deputation order amounts to transfer and it cannot be continued for longer period. It has trapping of transfer under the guise of temporary deployment. The O.A. was allowed giving directions to Respondent No.1 to repost the Applicant. Liberty was also given that Respondent No.1 may thereafter transfer the Applicant, if warranted, in accordance to law.

(f) In view of the decision in O.A.No.696/2019, the Respondent No.1 reposted the Applicant at Boisar Police Station w.e.f. 13.11.2019.

3. It is on the above background, the Respondent No.1 again transferred the Applicant from Boisar Police Station to Control Room, Palghar by order dated 14.01.2020 invoking the powers under Section 22N(2) of Maharashtra Police Act on the basis of two default reports dated 16.12.2019 and 01.01.2020 attributing misconduct to the Applicant submitted by Respondent No.2 – SDPO, Boisar and on the basis of recommendations of PEB (Police Establishment Board) which is under challenge in the present Original Application in second round of litigation.

4. Shri A. V. Bandiwadekar, learned Counsel for the Applicant sought to assail the impugned transfer order mainly on the following grounds:-

(I) The Applicant is transferred mid-term and mid-tenure under the colorable exercise of powers under Section 22N(2) of Maharashtra Police Act without making out exceptional case or public interest as contemplated under Section 22N(2) of Maharashtra Police Act.

(II) During the short span from reposting of the Applicant at Boisar Police Station w.e.f. 13.11.2019 deliberately several memos were issued to the Applicant so as to create grounds for transfer in colorable exercise of powers.

(III) Non compliance of Circular dated 07.10.2016 and 08.11.2017 inter-alia providing procedure for transfer on complaint or misconduct.

(IV) Since, the Respondent No.2 – Shri Vishwas Walvi himself had submitted two default reports dated 16.12.2019 and 01.01.2020 to Respondent No.1, he should not have acted as a member of PEB, and therefore, the decision of PEB to transfer the Applicant was bias.

5. Shri A. V. Badniwadekar, learned Counsel for the Applicant thus submits that the impugned transfer order is outcome of bias and it is upon unsubstantiated allegations of misconduct. He has further pointed out that after filing of Original Application even if the regular inquiry has been initiated on 11.02.2020, it is still not concluded though the period of more than eleven months is over which again indicates that the ground of transfer were not substantiated by sufficient material.

6. Learned Counsel for the Applicant in this behalf sought to place reliance on the decision of the Hon'ble Supreme Court **2002 SCC (L & S) 350 (G. N.Naik v/s Goa University and Ors.)** wherein it has been held that reasonable possibility of bias or circumstance leading to inference of operation of influence affecting a fair assessment of merits of the case are sufficient to vitiate the action. He further referred to the decision of the Hon'ble High Court in **W.P. No.9781/2014 State of Maharashtra**

V/s Dr. Padmashri Bainade and Ors. where in fact situation the order of transfer having found in the breach of principles of statutory provisions and principles of natural justice which was amounting to punishment based upon unproved alleged misconduct was quashed.

7. Per contra, Smt. Archana B. K., learned Presenting Officer for the Respondents submits that in view of the decision rendered by this Tribunal in first round of litigation i.e. O.A. No.696/2019, the Applicant was reposted at Boisar but thereafter he was again found indulging in serious misconduct which were preliminarily inquired into by the Respondent No.2 and submitted detailed and exhaustive report on 16.12.2019. Apart, the Respondent No.2 had again submitted second report dated 01.01.2020 about grievances raised by Shri Kantilal Rathod, President, Jewellers Association, Palghar against the Applicant. The reports were accordingly placed before the PEB which unanimously recommended for transfer of the Applicant in public interest and on administrative exigency. She thus submits that there is no illegality in the impugned transfer order. Learned P.O. placed reliance on the decision given by this Tribunal in **O.A.No.936/2017 in Mahesh Gosavi V/s State of Maharashtra, decided on 30.04.2019** wherein mid-term and mid-tenure transfer of police personnel on administrative exigency (default report) was upheld and Original Application was dismissed.

8. Whereas, Shri K.R. Jagdale, learned Counsel for the Respondent No.2 submits that the Respondent No.2 acted in his official capacity and after preliminary inquiry, submitted two reports dated 16.12.2019 and 01.01.2020. He submits that the allegations of bias attributed to the Respondent No.2 are totally unfounded and baseless. He has further pointed out that the decision of transfer of the Applicant was unanimous in view of the recommendation of PEB, and therefore, the question of bias or prejudice does not arise.

9. In view of the submission advanced at a bar, the question posed for consideration whether the impugned transfer suffers from any illegalities or infirmity so as to interfere in judicial review by this forum.

10. True, after reposting of the Applicant at Boisar Police Station w.e.f. 13.11.2019 after short period of two months, he was again transferred by impugned order dated 14.01.2020. But it should not be forgotten that while deciding O.A.No.696/2019 liberty was given to the Respondent No.1 that he may transfer the Applicant if warranted by exercising due process of law. The order dated 28.02.2019 which was challenged in O.A.No.696/2019 was of temporary deputation which lasted for more than seven months. Therefore, this Tribunal held that the said deployment order was amounting to transfer under guise of temporary deployment, and therefore, it was quashed.

11. At this juncture, it would be apposite to reproduce Para Nos.11 to 13 of the judgment in O.A.No.696/2019 which are as under:-

“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 issuing 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.”

12. In the matter of transfer of a Government servant in view of catena of the decision following principles are enunciated:-

“(A) An order of transfer is an administrative order and ordinarily is an incident of service. Therefore, it should not be interfered with except where malafides on the part of authority is proved.

(B) Transfer which is made on the ground of complaint is punitive in nature. Punitive transfer cannot be made without an enquiry and substantiation of the same by the competent authority.

(C) In case of mid-term or mid-tenure transfer, it must be shown that the matter is examined objectively and where it relates to police personnel, it should be in compliance of Section 22N(2) of Maharashtra Police Act.

13. In view of these settled principles of law let us see whether impugned transfer order needs interference by this forum.

14. Section 22N(2) of Maharashtra Police Act reads as under:-

“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 make mid-term transfer of any Police Personnel of the Police Force :

[* * *]

[Explanation.- For the purposes of this sub-section, the expression “Competent Authority” shall mean :-

	Police Personnel		Competent Authority
(a)	Officers of the Indian Police Service.	Chief Minister;
(b)	Maharashtra Police Service Officers of and above the rank of Deputy Superintendent of Police	Home Minister;

- | | | | |
|-----|---|------|---|
| (c) | Police Personnel up to the rank of Police Inspector for transfer out of the respective Range or Commissionerate or Specialized Agency | | Police Establishment Board No.2; |
| (d) | Police Personnel up to the rank of Police Inspector for transfer within the respective Range, Commissionerate or Specialized Agency | | Police Establishment Boards at the Level of Range, Commissionerate or Specialized Agency, as the case may be; |
| (e) | Police Personnel up to the rank of Police Inspector for transfer within the District. | | Police Establishment Board at District Level. |

Provided 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 recommendation of the concerned Police Establishment Board.]”

15. In present case, the Applicant being Police Inspector, the PEB at district level was competent authority for mid-term and mid-tenure transfer of the Applicant.

16. In so far as Circular dated 07.10.2016, 08.11.2017 issued by Director General of Police are concerned, it speaks about the procedure to be followed where mid-term and mid-tenure transfer is necessitated on account of administrative exigency, public interest. It further provides that where transfer is necessitated on complaint, preliminary inquiry should be conducted and matter should be placed before the PEB so as to comply the provisions of Section 22N(2) of Maharashtra Police Act in latter and spirit.

17. Turning to the facts of the present case, admittedly the Applicant has not completed his normal tenure at the time of impugned transfer order. After reposting of the Applicant at Boisar Police Station w.e.f. 13.11.2019 performance of the Applicant found far from satisfaction and there were allegations of misconduct and dereliction of duties. The Respondent No.2, therefore, conducted preliminary inquiry and submitted detailed report dated 16.12.2019 to the Respondent No.1 which is at page No.79 to 87 of PB. In report, he noticed several lapses on the part of Applicant and has given nine instances of non performance and dereliction of duties. In report he concluded in following words :-

“एकंदरीत पोलीस निरीक्षक, किशोर बबन जगताप हे प्रभारी अधिकारी म्हणून कामकाज करण्यालायक नसून त्यांचे बेजबाबदार व निष्कालजी वर्तनामुळे भविष्यात बोईसर पोलीस ठाणे हददीत कायदा व सुव्यवस्थेचा गंभीर प्रश्न निर्माण होण्याची शक्यता आहे. तसेच पोलीस ठाण्यात तक्रार देण्यास येणा-या तक्रारदारांची प्राधान्याने तक्रार दाखल करून घेण्यास ते तक्रार देत असून टाळाटाह करीत आहेत. सदरचे त्यांचे वर्तन नियमबाह्य व बेकायदेशीर आहे. फौजदारी प्रक्रिया संहिता व पोलीस मॅन्युअल प्रमाणे गैर आहे. त्यांचेसदर वर्तनामुळे तक्रारदार आम्हास अथवा वरिष्ठांना भेटल्यानंतर आम्ही अथवा वरिष्ठांनी आदेशीत केल्यानंतर तक्रारदारांची तक्रार दाखल करून घेण्याची कार्यवाही विलंबाने व नाखुशीने करण्यात येते. त्यांना वरिष्ठ या नात्याने वारंवार मार्गदर्शन व सुचना देवूनही त्यांचे बेकायदेशीर, बेदरकार व बदफैली वर्तणुकीत कोणतीही सुधारणा होत नाही. त्यांना त्यांचे कसुरीप्रकरणी आम्ही व यापुर्वीचे उप विभागीय पोलीस अधिकारी बोईसर यांनी वारंवार खुलासे विचारले असता त्यांनी बहुतांश प्रकरणी त्यांचे खुलासे सादर करण्याची तसदी सुध्दा घेतलेली नाही. कायदा व नियमाने वरिष्ठ अधिकारी म्हणून आम्हास दिले अधिकारांचे व नियमांचे ते वारंवार व जाणुनबुजुण हेतुपुरस्सर अवहेलना करीत असतात. त्यांचे सदरचे वर्तन पोलीस दलाच्या शिस्तीस बाधक असून, त्यांचे बेशिस्त व बेजबाबदार वागणुकीचे अनुकरण इतर पोलीस अधिकारी व कर्मचारी करतांना दिसून येत आहे. तसेच त्यांचे हेकेखोर व विपर्यस्थ वर्तनामुळे पोलीस ठाण्याचे वातावरण कलुशीत होत आहे.

पो.नि.किशोर जगताप यांना वरिष्ठ या नात्याने दिलेल्या आदेशाची अवज्ञा करून वरिष्ठांशी उध्दट वर्तन व उध्दट भाषा वापरणे, मनमानी प्रकारे केलेले काम हे पोलीस नियमावलीला धरूनच आहे असा स्वतःचा ठाम गैरसमज करून आम्ही नियमास धरून केलेले कायदेशीर मार्गदर्शन हे त्यांच्या अहंकारास दुखावणारे असून ते त्यांना विनाकारण अपमानास्पद वाटते. त्यामुळे केलेल्या मार्गदर्शनाला आरेला का रे करण्याची सवय पो.नि.किशोर जगताप यांना आहे.

समाजामध्ये जनताही पोलीस अधिकारी यांचेकडे आदराचे भावनेने पहात असते व पोलीस दलाकडून संरक्षणाची व त्यांचे समस्या जाणून त्या सोडविण्याची अपेक्षा ठेवून असतात. परंतु पो.नि.किशोर जगताप यांचेसारखे बेजबाबदार वर्तनामुळे जनतेच्या अपेक्षेचा भंग होतो व अशा अधिका-यांमुळे पोलीस दलाची जनमानसात प्रतिमा मलीन होत असून जनतेच्या मनात पोलीस दलाबद्दल द्वेष व चिड निर्माण होत आहे.

पोलीस अधिकारी यांचे कर्तव्य व जबाबदा-या विचारात घेता त्यांचा संबंध थेट जनतेची सुरक्षा आणि कायदा व सुव्यवस्था यांचेशी येतो. त्यामुळे कोणत्याही अधिका-यांचे चारित्र्य, सचोटी आणि त्यांची कर्तव्य परायणता ही निसंशय असणे आवश्यक आहे. पो.नि.किशोर जगताप यांचे बेशिस्त, बेजबाबदार, निष्काळजी, हेकेखोर व लाचखोर वृत्तीमुळे त्यांना बोईसर पोलीस ठाणे येथे कर्तव्यास ठेवणे व्यापक जनहिताचे दृष्टीने उचित होणार नाही. तसेच एकंदरीत वर्तणुकीतुन काम करण्याची पध्दत व कृती पाहता ते कार्यकारी पदावर काम करण्यास योग्य व लायक नाहीत असे आमचे स्पष्ट मत आहे. वरील त्यांचे नमुद गुणांमुळे सदरचा अधिकारी हा गुन्हेगारी वृत्तीचा असल्याचे स्पष्ट दिसून येते. अशा परिस्थितीत त्यांचेवर आवश्यक योग्य ती कायदेशीर/नियमाप्रमाणे कारवाई करून पोलीस खात्याची प्रतिमा व प्रतिष्ठा जपण्यात यावी अशी आमची धारणा आहे.

तरी मा.हुजुरांना विनंती की, वरील त्यांचे गैर, बेशिस्त, बेजबाबदार व लाचखोर वर्तणुकी बाबत त्यांचे विरुद्ध योग्य ती कायदेशीर शिस्तभंगाची कारवाई करण्यात यावी ही विनंती.’’

18. Respondent No.2 then again submitted second report dated 01.01.2010 in view of complaint of Shri Kantilal Rathod, President of Jewellers Association, Palghar which is at page Nos.88 to 93 of PB. In report, he concluded in following words:-

“ एकंदरीत, पोनि/जगताप व गुन्हे प्रकटीकरण पथकातील ०१) पोहवा/८२२ दयानंद अनंत पाटील ०२) पोहवा/९३७ संदीप संतोष सरदार ०३) पो.ना/८९४ विजय संतोष ठाकुर ०४) पो.ना./१५७६ कैलास सुदाम पाटील यांना पोलीसांच्या जबाबदा-या, कर्तव्य व कायद्याचे ज्ञान असतानाही त्यांनी गैरउद्देशाने त्यांचे कर्तव्यात वरनमुद प्रमाणे गंभीर कसुरी केली असून त्यांचे सदरचे वर्तन पोलीस दलाच्या शिस्तीस अशोभनीय आहे. त्यांनी त्यांचे पदाचा हेतुपुरस्कर गैरवापर करून त्यांचे कर्तव्यात नितांत सचोटी राखली नाही. त्यांचे लाचखोर वर्तनामुळे जनमानसात पोलीसांबाबतचे मत कुलशीत झाले असून ते पोलीस दलाची प्रतिमा मलीन होण्यास कारणीभूत ठरले आहेत. त्यामुळे त्यांचे सदर बेशिस्त, बेजबाबदार, विपर्यस्थ व लाचखोर वर्तणुकी बाबत त्यांचे विरुद्ध योग्य ती कायदेशीर शिस्तभंगाची कारवाई करण्यात यावी ही विनंती.’’

19. Accordingly, both the reports were placed before PEB headed by the Respondent No.1 – Superintendent of Police, Palghar and after deliberation, the PEB unanimously opined that the Applicant has misused his position as police officer and his transfer is necessitated to maintain in public interest and concluded in following words :-

“ एकंदरीत, वर नमुद दोन्ही अहवालावरून पोलीस निरीक्षक, किशोर बबनराव जगताप यांनी त्यांना पोलीस निरीक्षक म्हणून मिळालेल्या पदाचा व अधिकाराचा दुरुपयोग करून त्यांचे कर्तव्यात नितांत सचोटी व परायणता राखली नसल्याचे स्पष्ट होत आहे.

पोलीस अधिकारी यांचे कर्तव्य व जबाबदा-या विचारात घेता त्यांचा संबंध थेट जनतेची सुरक्षा आणि कायदा व सुव्यवस्था यांचेशी येतो. त्यामुळे कोणत्याही अधिका-याचे चारित्र, सचोटी आणि त्यांची कर्तव्य परायणता ही निसंशय असणे आवश्यक आहे. परंतु वरनमुद केल्याप्रमाणे पोलीस निरीक्षक, किशोर बबनराव जगताप यांचे गैरवर्तन, लोकसेवक म्हणून प्राप्त असलेल्या अधिकाराचा हितलाभासाठी गैरवापर करणे, संशयास्पद सचोटी, बेशिस्त वर्तन यासर्व बाबींवरून पोलीस दलाची जनमानसात प्रतिमा मलीन होण्यास ते कारणीभूत ठरले आहेत. त्यामुळे पोलीस निरीक्षक, किशोर बबनराव जगताप यांना बोईसर पो.स्टे.येथे कर्तव्यास ठेवणे व्यापक जनहिताचे दृष्टीने उचीत होणार नाही, या निर्णयाप्रत पालघर जिल्हास्तरीय पोलीस आस्थापना मंडळ आले आहे.

सदरची बाब अपवादात्मक परिस्थितीत मोडते म्हणून जनहितार्थ व प्रशासकीय बाब म्हणून पोलीस निरीक्षक, किशोर जगताप यांची बोईसर पो.स्टे. ते नियंत्रण कक्ष, पालघर अशी मुदतपूर्व बदली करण्याबाबतचा निर्णय आस्थापना मंडळाने घेतला आहे.

म्हणून, महाराष्ट्र पोलीस अधिनियम १९५१ मधील कलम २२ न मधील पोट कलम(२) सह सन २०१५ चा महाराष्ट्र पोलीस अधिनियम क्र.११, दिनांक ०६/०४/२०१५ मधील सुधारीत स्पष्टीकरणानुसार जिल्हास्तरीय पोलीस आस्थापना मंडळ यांना अपवादात्मक प्रकरणांमध्ये जनहितार्थ आणि प्रशासनिक निकडीनुसार सक्षम प्राधिकारी म्हणून प्रदान असलेल्या अधिकारांचा वापर करून पोलीस निरीक्षक, किशोर बबनराव जगताप यांची बोईसर पो.स्टे.ते नियंत्रण कक्ष, पालघर अशी बदली करण्याची सर्वानुमते निर्णय घेण्यात आला आहे.”

20. Thus, what transpires from exhaustive reports of preliminary inquiry dated 16.12.2019 as well as 01.01.2020 and Minutes of PEB that members of committee deliberated upon the misconduct attributed to the Applicant objectively and the interest of public as well as to maintain image of police, the mid-term transfer of the Applicant was found necessitated. This decision of the mid-term transfer thus cannot be said unfounded, arbitrary or bias. Indeed, it is founded on exhaustive preliminary inquiry report submitted by the Respondent No.2. Needless to mention, the orders of transfer are always made in the exercise of administrative authority to meet the exigency of service and in public interest. In the present case, if PEB had arrived to the conclusion that the transfer of the Applicant is necessitated which is based on preliminary inquiry report then such decision can hardly be termed malicious so as to interfere therein by the Tribunal. The allegations of misconduct as seen from preliminary inquiry report are certainly serious

in nature and if established it can invite serious action. Indeed, after transfer of the Applicant, the department had initiated regular D.E. by issuance of charge sheet on 11.02.2020 and SDPO has been appointed as Enquiry Officer. As such, this is not a case that Applicant was simply transferred on the allegation of misconduct but it is a case where appropriate action for disciplinary proceeding are initiated and are underway. True, the D.E. is still unconcluded. However, the fact remains that department had initiated a regular D.E. and the same is in process.

21. Indeed in law, it is not necessary for the department to wait for initiation of departmental proceeding and its conclusion before transferring employee. What is needed for transfer is *prima-facie* satisfaction of the authority about misconduct attributed to employee. In this behalf, it would be apposite to refer the decision of the Hon'ble Supreme Court **(2004) 4 SCC 245 (Union of India v/s Sri Janardhan Debanath & Anr. decided on 13.02.2004)**, where in which Para No.14 is as under:-

"14. The allegations made against the respondents are of serious nature, and the conduct attributed is certainly unbecoming. Whether there was any misbehavior is a question which can be gone into in a departmental proceeding. For the purposes of effecting a transfer, the question of holding an enquiry to find out whether there was misbehavior or conduct unbecoming of an employee is unnecessary and what is needed is the prima facie satisfaction of the authority concerned on the contemporary reports about the occurrence complained of and if the requirement, as submitted by learned counsel for the respondents, of holding an elaborate enquiry is to be insisted upon the very purpose of transferring an employee in public interest or exigencies of administration to enforce decorum and ensure probity would get frustrated. The question whether respondents could be transferred to a different division is a matter for the employer to consider depending upon the administrative necessities and the extent of solution for the problems faced by the administration. It is not for this Court to direct one way or the other. The judgment of the High Court is clearly indefensible and is set aside. The Writ Petition filed

before the High Court deserves to be dismissed which we direct. The appeals are allowed with no order as to costs.”

22. Before passing impugned transfer order admittedly, several memos were given to the Applicant which is at page Nos.101 to 113 of PB. True, the Applicant gave reply as seen from the chart page no.322 of PB. It seems that explanation given by the Applicant found not satisfactory. Suffice to say this is not a case where no opportunity of hearing was given to the Applicant before passing impugned order of transfer.

23. As regard, alleged bias, true, the Respondent No.2 himself conducted preliminary inquiry and he was also one of the member of PEB. Material to note that the PEB was consisting of three members namely Respondent No.1 – Superintendent of Police, Respondent No.2 – as Member Secretary belonging to Reserved Category and Shri Vijaykant Sagar, Additional Superintendent of Police, Vasai. The submission of learned Counsel for the Applicant that the Respondent No.2 should not have acted as a Member of PEB and the decision of PEB is influenced by the presence of Respondent No.2 is totally unsustainable. All members have taken unanimous decision to transfer the Applicant. As such, apart from Respondent No.2, two other members were also there. There are no other personal allegation against the Respondent No.2. As a matter of record, the Respondent No.2 acted in his official capacity and submitted inquiry report. There is nothing to show that he had personal grudge against the Applicant so as to infer bias. The decision of transfer is founded on inquiry reports without any personal interest or bias.

24. In this behalf, the Hon'ble Supreme Court in **G.N. Naik's** case (cited supra) relied by the learned Counsel for the Applicant itself observed that it is not every kind of bias which in law taken to vitiate an act. There must be prejudice which is not founded on reason and actuated by self interest. In this behalf Para no.34 of judgment is material which is as under:-

“34. It is not every kind of bias which in law is taken to vitiate an act. It must be a prejudice which is not founded on reason, and actuated by self-interest – whether pecuniary or personal. Because of this element of personal interest, bias is also seen as an extension of the principles of natural justice that no man should be a judge in his own cause. Being a state of mind, a bias is sometimes impossible to determine. Therefore, the courts have evolved the principle that it is sufficient for a litigant to successfully impugn an action by establishing a reasonable possibility of bias or proving circumstances from which the operation of influences affecting a fair assessment of the merits of the case can be inferred.”

25. In present case, it cannot be said that decision of transfer was unfounded and it was based on bias. Suffice to say, if the decision is rational unaccompanied by consideration of personal interest and where two independent members were part of PEB, it would not vitiate the decision. I, therefore, find no merit in the theory of bias canvassed by the learned Counsel for the Applicant.

26. In ***Padmashri Bainade’s*** case (cited supra), the transfer was on the basis of misconduct but there was no proper reasoning to bring it within the ambit of such case as contemplated under Section 4(5) of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as ‘Act 2005), and therefore, transfer order was quashed. Whereas in present case, transfer order is based on two preliminary inquiry reports and later regular D.E. is also initiated against the Applicant. Therefore, the decision in ***Padmashri Bainade’s*** case is of little assistance to the Applicant.

27. As such, material placed on record clearly demonstrates that the transfer of the Applicant is necessitated in view of serious misconduct attributed to the Applicant. The decision to transfer the Applicant seems to have been taken in public interest and to maintain the image of police in public. Such decision of transfer can hardly be termed malicious or colorable exercise of power.

28. Here, I am also guided by the Hon'ble Bombay High Court in **2007 (6) BOM CR 579 (V. B. Gadekar, Deputy Engineer V/s Mhada)** wherein it has been held as under

“Ordinarily, orders of transfer are made in the exercise of administrative authority to meet the exigencies of service and I public interest. How the Administration has to run its affairs is not a matter which squarely falls in the judicial domain. Unless the orders of transfer were in conflict with Rules and were made for ulterior motives or in a patent arbitrary exercise of powers, the Court would decline to interfere in such matter. The transfer could be due to exigencies of service or due to administrative reasons. The petitioners in the resent case have failed to demonstrate as to how the order of transfer has been passed for collateral purposes or is a patent arbitrary exercise of power”.

29. The necessary corollary of the aforesaid discussion leads me to sum up that the challenge to transfer order is devoid of merit and O.A. deserved to be dismissed. Hence the following order:-

ORDER

Original Application is dismissed with no order as to costs.

Sd/-

**(A.P. KURHEKAR)
MEMBER (J)**

Date : 29.01.2021
Place : Mumbai
Dictation taken by :
Vaishali Santosh Mane
Uploaded on :