

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1029 OF 2017

DISTRICT : PUNE

Shri Dilip Keshav Kulkarni,)
57 years, Senior Police Inspector,)
R/at 1161/B, Parvati Apt., Budhwar Peth, Pune)..Applicant

Versus

1. The State of Maharashtra,)
Through Secretary,)
Home Department, Mantralaya, Mumbai)
2. The Police Commissioner,)
Pune City, Sadhu Vasvani Road,)
Near GPO, Camp, Pune 411001)
3. The Joint Commissioner of Police,)
Pune City, Sadhu Vasvani Road,)
Near GPO, Camp, Pune 411001)
4. The Additional Commissioner of Police (Admn),)
Pune City, Sadhu Vasvani Road,)
Near GPO, Camp, Pune 411001)
5. Shri Sampatrao Dnyanoba Bhosale,)
Police Inspector at Control Room, Pune City)
in the office of Respondent no.2)..Respondents

Shri K.R. Jagdale – Advocate for the Applicant

Shri N.K. Rajpurohit – Presenting Officer for the Respondents

CORAM : Shri Justice M.T. Joshi, Vice-Chairman
Shri P.N. Dixit, Member (A)

CLOSED ON : 8th March, 2018

PRONOUNCED ON : 4th April, 2018

J U D G M E N T

PER: Shri P.N. Dixit, Member (A)

1. Heard Shri K.R. Jagdale, learned Advocate for the Applicant and Shri N.K. Rajpurohit, learned Presenting Officer for the Respondents.

2. As per the learned Advocate for the applicant the applicant was working as Senior Police Inspector at Bhosari Police Station. The respondent no.2 transferred him from Bhosari Police Station, Pune City to Police Control Room, Pune by impugned order dated 31.10.2017 (Exhibit C page 13).

3. According to the applicant he was transferred because his subordinates were caught red handed by the Anti Corruption Bureau accepting bribe for themselves. The applicant was, it is alleged, transferred due to lack of supervision over his subordinates. The learned advocate for the applicant contends that the impugned transfer order is illegal and arbitrary. The learned Advocate for the applicant contends that it is in violation of proviso to Section 22N(1) of the Maharashtra Police (Amendment) Act, 2015 which provides that transfer can only be made by the State and not even by the Police Establishment Board or highest police functionaries in case of mid-tenure transfer. In this connection learned

advocate for the applicant has drawn our attention to the judgment and order dated 12.7.2016 of this Tribunal in OA No.466 of 2017 Shri Arun Ramchandra Pawar Vs. State of Maharashtra & Ors.

4. Shri K.R. Jagdale, learned Advocate for the Applicant has relied on the following judgments:

- (i) OA No.199 of 2015 Shri Narayan M. Sarangkar Vs. State of Maharashtra & Anr. decided by this Tribunal on 26.10.2015.
- (ii) OAs. No.562, 744, 677 & 869/2015 Shri Sham M. Sundkar & Ors. Vs. State of Maharashtra & Ors. decided by this Tribunal on 20.11.2015.
- (iii) OA No.780 of 2014 Dr. Dilip A. Deshmukh Vs. State of Maharashtra decided by this Tribunal on 10.10.2014.
- (iv) OA No.69 of 2015 Shri Rajeevsingh S. Parmar Vs. State of Maharashtra & Ors. decided by this Tribunal on 19.3.2015.
- (v) OA No.536 of 2016 Shri Vikas K. Biyani Vs. State of Maharashtra & Ors. decided by this Tribunal on 7.7.2016.
- (vi) OA No.13 of 2017 Shri Ramesh N. Swami Vs. State of Maharashtra & Ors. decided by this Tribunal (Aurangabad Bench) on 22.9.2017.
- (vii) OA No.668 of 2017 Smt. Ujwala S. Ghavte Vs. State of Maharashtra & Anr. decided by this Tribunal on 17.1.2018.
- (viii) Writ Petition No.5465 of 2012 Kishor S. Mhaske Vs. Maharashtra OBC Finance & Development Corporation & Ors. decided by Hon'ble Bombay High Court on 7.3.2013.
- (ix) Civil Appeal No.4651 of 1997 Shri Arvind D. Dhande Vs. State of Maharashtra & Ors. decided by Hon'ble Supreme Court on 10.7.1997 (AIR 1997 SC 3067).
- (x) AIR 2007 SC 2141 Tejshree Ghag etc. Vs. Prakash P. Patil decided by Hon'ble Supreme Court on 17.5.2017.

- (xi) Writ Petition No.254 of 1987 Shamrao C. Kamble Vs. Dy. Engineer (BC) Panchayat Samiti & Ors. decided by Hon'ble Bombay High Court on 13.10.1997 (1998 (1) Mh.L.J.109).
- (xii) Civil Appeal No.1478-79 of 1993 Ramadhar Pandey Vs. State of UP & Ors. decided by Hon'ble Supreme Court on 30.3.1993 (1993 AIR SCW 2581).
- (xiii) Civil Appeal No.2791 of 1985 Bir Bajrang Kumar Vs. State of Bihar & Ors. decided by Hon'ble Supreme Court on 8.7.1985.

5. The judgments relied on by the Ld. Advocate for the applicant are not applicable in the present case as the facts are totally different. All these decisions relate to the orders of transfer from one headquarter to another, while for the reasons to follow we conclude that the present impugned order is not a transfer, being posting within the same commissionerate, and even otherwise by following due procedure.

6. On the other hand learned Presenting Officer for the respondents through the affidavit in reply filed by respondent no.2 mentioned in para 2.2 of the affidavit that the ACP incharge of Bhosari Police Station has given oral instructions to the applicant not to arrest accused namely Mr. Prasad Tate being father of the kidnapped girl. In spite of that API Mr. Somnath Nale subordinate of applicant threatened Mr. Prasad Tate to arrest and demanded bribe of Rs.50,000/-. The Deputy Commissioner of Police, Zone-3 and Additional Commissioner of Police, North Region, Pune city gave reports regarding applicant to respondent no.2, which were considered by the PEB at Commissionerate level on 31.10.2017. After applying its mind the PEB arrived at the conclusion that the applicant should be transferred from Bhosari Police Station to Control Room. It is further mentioned that there was no discriminatory and illegal act in reaching to this conclusion. The respondent no.2 further draws our attention to provision of Section 22N(1)(c) of the Maharashtra Police (Amendment) Act, 2015. It has been provided as per sub Section 2 of

Section 22N that 'competent authority' shall make mid-term transfer of any police personnel on the ground of public interest and on account of administrative exigencies. In case of commissionerate, the competent body as per these legal provisions is PEB2.

7. Ld. PO further emphatically submitted that the change of posting of the present applicant from Bhosari Police Station to Control Room at Pune being within the same commissionerate cannot be termed as transfer and therefore, there is no hitch in passing the posting orders by the Police Commissioner in consultation with PEB2 within his jurisdiction.

8. Ld. PO has subsequently submitted written notes of arguments and in para 12 to 14 thereof he submits as follows:

"12. The Hon'ble Bombay High Court in Writ Petition No.8898 of 2010 (R.S. Kalal Vs. State of Maharashtra) has held that if headquarter is not changed then there is no transfer. This view was also subsequently confirmed in W.P. No.7664 of 2013 Pradip B. Lonandkar Vs. State of Maharashtra & Ors. On the basis of the same the Hon'ble Tribunal has decided a group of matters in OA No.897 of 2014 and others and dismissed the OAs on the basis that the headquarter has not been changed.

13. The Hon'ble Tribunal has also held in para 23 of the judgment in OA No.897 of 2014 with other group matters that the definition of the term transfer as seen in the Maharashtra Police (Amendment and Continuance) Ordinance, 2014 and ROT Act are *pari materia*. In the Maharashtra Police Act the said definition of transfer mentioned in the Maharashtra Police (Amendment and Continuance) Ordinance, 2014 was continued.

14. In the present case the applicant is transferred within the Pune Commissionerate and the Head Quarter of the Applicant is not changed and therefore this is not termed as 'Transfer'."

9. Respondent no.2 in the affidavit also draws attention to the judgment given by this Hon'ble Tribunal (Aurangabad Bench) in OA

No.390 of 2017 Vijay Shankarrao Tikole Vs. State of Maharashtra & Ors. wherein judgment of this Tribunal in OA No.466 of 2016 was considered. This Hon'ble Tribunal observed in para 27 of judgment of the said OA that:

“In view of above discussion, it is clear that the impugned order has been issued by the respondent no.3 on the basis of the decision taken by the Police Establishment Board at Range level. The Police Establishment Board at Range level decided to transfer the applicants in the public interest on account of administrative exigencies and considering the exceptional circumstances mentioned in the minutes of meeting dated 31.5.2017. The said order is in accordance with the provisions of Section 22N(2) of the Maharashtra Police Act, 2015. The Police Establishment Board at Range level is “Competent Authority” to make mid tenure and mid-term transfers of the applicants. The impugned order is legal and in accordance with the provisions of the law. There is no illegality in the impugned order issued by the respondent no.3.”

(Quoted from page 49 of OA)

10. The respondent no.2 also draws attention to para 5.3 of the reply wherein it is mentioned that the Hon'ble High Court in Writ Petition No.10622 of 2013 Rajan Ramchandra Bhogale Vs. Govt. of Maharashtra and others held in para 26 that:

“To our mind, the observations in the Tribunal's order that even the posting orders have to be issued by the Police Commissioner with the permission of the State has no basis in law. The Tribunal is aware that power of internal posting vests in the superior, in this case, the Police Commissioner and he can exercise all such powers as are conferred in the Police Commissioner by law. In such circumstances, in matters of posting, the interference by the Tribunal was totally uncalled for and wholly unwarranted.”

(Quoted from page 50 of OA)

11. The ratio of the judgment in OA No.466 of 2016 (supra) relied on by the applicant would not be applicable in the present case because in that case this Tribunal was considering the transfer of the applicants from

Mumbai to Kolhapur etc. In the present case however, we have found that there is only change of posting within the same Police Commissionerate of Pune. As discussed above, in Commissionerate, the Commissioner assisted by PEB2 is the competent body to decide all matters pertaining to internal postings including mid-term postings for reasons to be recorded.

12. We, therefore, feel that the action taken by the respondent no.2 in consultation with PEB-2 is in exercise of the powers vested under her in the public interest. The impugned order is issued with valid reasons and does not appear to be arbitrary, malafide or illegal. The applicant who is Inspector incharge of the Police Station cannot claim to be a victim for uncontrolled, corrupt and illegal behaviour indulged in by his subordinates resulting in harassment to the public. Hence, there is no merit in the OA and no interference is called for with the order issued by the respondent no.2. Therefore, the OA deserves to be dismissed.

13. OA is dismissed with no order as to costs.

Sd/-
(P.N. Dixit)
Member (A)
4.4.2018

Sd/-
(M.T. Joshi, J.)
Vice-Chairman
4.4.2018

Dictation taken by: S.G. Jawalkar.