

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.784 OF 2017**

DISTRICT : SOLAPUR

Shri Sanjay Dnyandeo Surve,)
Age 50 years, Police Inspector in Solapur Rural,)
Police Colony, At Post Akluj, Tal. Malshiras, Solapur)..Applicant

Versus

1. The District Superintendent of Police (Rural),)
Solapur, District Solapur)
2. Shri Arun Sahebrao Sawant,)
Police Inspector, At Post Akluj, District Solapur)..Respondents

Shri C.T. Chandratre – Advocate for the Applicant

Smt. K.S. Gaikwad – Presenting Officer for Respondent No.1

None for Respondent No.2

CORAM : Shri P.N. Dixit, Member (A)
RESEVED ON : 25th July, 2018
PRONOUNCED ON : 30th July, 2018

J U D G M E N T

1. Heard Shri C.T. Chandratre, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for Respondent No.1.

Brief facts:

2. The Applicant was working at Akluj Police Station, District Solapur from 9.6.2016. By the impugned order dated 2.8.2017 (Exhibit A-1 page 9), the Applicant was transferred from Akluj Police Station to Control Room and in his place Respondent no.2 was transferred from Control Room to Akluj Police Station. Thus, he was transferred within a period of fourteen months. According to the applicant, this was done to accommodate Respondent No.2.

3. The Applicant has prayed to set aside the impugned transfer order and direct the Respondents to restore his posting as office incharge of Akluj Police Station.

4. Shri C.T. Chandratre, learned Advocate for the Applicant has furnished following grounds in support of his claim in his written submissions:

(1) Under Section 22-N(1) of Maharashtra Police Act, 1951 and specially under sub Section (c) normal tenure assured to the Police Inspector is of two years to Police Station.

(2) Under Section 22N(1)(e) the competent authorities for issuing transfers are prescribed.

(3) Under proviso of section 22N (1) it is stated that State Government has authority to transfer before completion of normal tenure in given contingencies (a) to (c). Not a single contingency has arose while issuing the impugned transfer order of Applicant.

(4) "Contemplated disciplinary proceedings" means there must be a preliminary report duly prepared by following procedure in the hands of the transferring authority while issuing transfer order. Now

even after lapse of one year no charge sheet has been issued to Applicant. This is a clear proof that the impugned transfer order was issued with malafide intention and specially to make a room for private Respondent. There is violation of their own circular i.e. D.G's circular dated 8.11.2017 and 7.10.2016.

(5) While issuing transfer order there was no valid material before Police Establishment Board except letter from Special I.G. dated 25.7.2017 (page 29). It is stated that large numbers of complaints are received from Akluj. This is totally vague statement and the letter has not been forwarded with single complaint. This letter has been issued with an object to make a room/post for Shri Arun Sahebrao Sawant – Respondent No.2, who has been posted in place of the Applicant.

(6) Shri Arun Sahebrao Sawant – Respondent No.2, though impleaded as party and served he has not appeared before this Hon'ble Tribunal. This fact is sufficient to infer that due to political pressure exercised by him Spl. IG has issued letter which is the base/foundation of transfer order.

(7) Thus, if the order is not based upon relevant material and is bad in law it requires to be set aside. For this purpose Applicant is relying upon para 9 of the judgment of Apex Court in 2011 AIR SCW 5636.

(8) Applicant submits that now by filing reply the Respondents are trying to rely upon show cause notices dated 5.4.2017, 16.5.2017 and 14.7.2017. It is submitted that those show cause notices were not before PEB. It is law that (Mohinder Gill & Anr. Vs. Chief Election Commission 1978 AIR 851) when statutory authority makes an order, based on certain grounds, its validity must be judged by the reasons so mentioned and cannot supplemented by fresh reasons in the form of affidavit or otherwise. Otherwise an order bad in the beginning may by time it comes to court on account of challenge get validated by additional grounds latter brought out.

(9) *On above ground, the reasons/material which were not before PEB (and now brought before Hon'ble Tribunal) based upon which transfer order has been passed, cannot be taken into consideration in order to ascertain the validity of the impugned order.*

(10) *From entire reply of the Respondent it is clear that Applicant came to be transferred in lieu of "punishment". Such transfer is not permissible in view of the law laid down by Hon'ble Supreme Court in para 16 of Somesh Tiwari Vs. Union of India (2009) 2 SCC 592. The order is therefore bad in law.*

(11) *Non filing the reply to the show cause notices in time cannot be ground for rejection of original application. The same was not material or foundation of the transfer order. However, para 4.6 of the rejoinder (page 36) is the explanation of the Applicant to the allegation made in reply filed to OA. Replies to show cause notices are not kept on record.*

5. The learned Advocate for the Applicant relies on following judgments in support of his contentions:

(1) *Mrs. Asha Sharma Vs. Chandigarh Administration & Ors., 2011 AIR SCW 5636. Para 9 of the said judgment reads as under:*

"9. Arbitrariness in State action can be demonstrated by existence of different circumstances. Whenever both the decision making process and the decision taken are based on irrelevant facts, while ignoring relevant considerations, such an action can normally be termed as 'arbitrary'. Where the process of decision making is followed but proper reasoning is not recorded for arriving at a conclusion, the action may still fall in the category of arbitrariness. Of course, sufficiency or otherwise of the reasoning may not be a valid ground for consideration within the scope of judicial review. Rationality, reasonableness, objectivity and application of mind are some of the pre-requisites of proper decision making. The concept of

transparency in the decision making process of the State has also become an essential part of our Administrative law.”

The Ld. Advocate contends that relevant facts are not being mentioned and the order is not reasoned. The letter from the IG does not contain the details of default.

(2) Somesh Tiwari Vs. Union of India & Ors., (2009) 2 SCC 592. Para 16 of the said judgment reads as under:

“16. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two kinds – one malice in fact and the second malice in law. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal.”

6. The Ld. Advocate for the Applicant also relies on para 5, 6 & 7 of the circular dated 8.11.2017 issued by DGP which reads as under:

“०५. थोडक्यात, वरील मा. महाराष्ट्र प्रशासकीय न्यायाधिकरण, नागपूर खंडपीठ यांनी नोंदविलेले Ratio/ निरीक्षणे राज्यातील सर्व घटक पोलीस प्रमुखांच्या निदर्शनास आणण्यात येत आहे की, कोणत्याही पोलीस कर्मचारी ते पोलीस अधिकारी पर्यंतच्या पोलीस अधिका-यांची जर महाराष्ट्र पोलीस अधिनियम, १९५१ मधील कलम २२ न (२)

मधील तरतुदीनुसार म्हणजे (१) Exceptional cases (२) Public Interest and (३) On account of Administrative exigency या तीघही निकषांच्या आधारावर ज्याप्रकरणामध्ये सामान्य पदावधी (Normal Tenure) पूर्ण होणाऱ्या आधी जर संबंधित पोलीस आस्थापना मंडळाला बदली करावयाची असेल तर, तशा सुयोग्य प्रकरणात ज्या कर्मचारी/अधिकारी (पो.नि. पर्यंत) यांची त्यांच्या प्रतिकूल कमगिरीवरून किंवा त्यांच्या प्रतिकूल वर्तणुकीच्या आधारावर बदली करावयाची असल्यास त्यांच्या वर्तणुकीच्याबाबतीत संबंधित घटक पोलीस प्रमुखांनी निपक्षःपातीपणे प्रथमतः प्राथमिक चौकशी करणे आवश्यक आहे.

०६. अशा प्राथमिक चौकशीमध्ये, ज्या पोलीस कर्मचारी/अधिकाऱ्यांचा (पो.नि.पर्यंत) सामान्य पदावधी पूर्ण होण्याच्याआधी बदली करावयाची असेल, तर त्यांचा सुध्दा अशा प्राथमिक चौकशीमध्ये जबाब नोंदवून घेणे आवश्यक आहे.

०७. अशाप्रकारे सर्व जाब-जबाबाची नोंदणी केल्यानंतर, जर प्राथमिक चौकशीमध्ये ज्या अशा संबंधित पोलीस कर्मचारी/अधिकाऱ्यांचा (पो.नि.पर्यंत) सामान्य पदावधी पूर्ण होण्याआधी बदली करावयाची असेल, त्यांच्याविरुद्ध प्राथमिक चौकशीमध्ये सकृतदर्शनी त्यांनी त्यांची वर्तणूक प्रतिकूल आढळल्याची बाब पुढे आल्यास, अशा प्राथमिक चौकशीचा अहवाल त्याच्या सर्व कागदपत्रांसह संबंधित “पोलीस आस्थापना मंडळासमक्ष” ठेवणे आवश्यक आहे.”

(Quoted from page 8 of compilation)

7. The Ld. Advocate for the Applicant contends that no DE has been conducted. No Preliminary Enquiry was also conducted as mentioned in the circular. Ld. Advocate mentions that after he was transferred, on 3.8.2017 he has submitted his replies to the show cause notice. Ld. Advocate states that the transfer order has been issued to accommodate Respondent no.2 as per his pleadings Ground para (c) page 5 of the OA.

Rebuttal by Respondents:

8. Smt. K.S. Gaikwad, learned Presenting Officer for the Respondent No 1 refutes the contentions through affidavit in reply. The relevant para 9(i) of the reply at page 16-17 reads as under:

“9. In reply to Ground (b), I say as follows:

(i) The contents therein are not true and correct, and denied by Respondent. There is no transfer of Applicant. It is posting on administrative ground only and the order is passed in compliance of S 22(J)(2) of Maharashtra Police Act. It is temporary posting from Akluj Police Station to Control Room. There is gross negligence on the part of Applicant. While performing official duties he had no control over the Police Station where he was posted and therefore in the public interest and due to administrative exigencies the Applicant was posted by the Respondent on the recommendation of the Police Establishment Board. There is huge pendency of applications, investigation in crimes by present Applicant due to which memos have been issued by competent authority.”

(Quoted from page 16-17 of OA)

9. According to the Ld. PO submissions of replies given by Applicant subsequent to the impugned order are not relevant as by that time the action was already taken. The Ld. PO contends that the judgment of the Hon'ble Supreme Court in Mrs. Asha Sharma (supra) is not relevant as the facts are different.

10. Ld. PO relies on the Head Note 'A' of the judgment of the Hon'ble Supreme Court in Somesh Tiwari (supra) which states:

“Transfer in administrative exigencies ought not be interfered with by courts.”

11. According to the Ld. PO the facts in the judgment of the Hon'ble Supreme Court in Somesh Tiwari (supra) pertain to anonymous

complaint. However, in the present case the action is taken as per the misconduct and inaction on the part of the Applicant. Hence, this judgment is not relevant.

12. According to the Ld. PO the PEB applied its mind to the facts before it, including the non performance by the Applicant and hence taken the decision. Therefore, the circular issued by the DGP is not relevant.

13. Ld. PO contends that there is no malafide, there is application of mind, there is no irrationality, the order is reasonable and therefore OA should be dismissed.

14. Issues for consideration:

(1) Whether the impugned order is passed to favour Respondent No.2?

(2) Whether the order is based on facts or only on the communication from Special IG, Kolhapur?

(3) Whether the impugned order is malafide, irrational, arbitrary and illegal?

Discussion and Findings:

15. On 2.8.2017 the Applicant was transferred from Akluj Police Station to Control Room. On 2.8.2017 he was further directed to work as in charge at Malshiras Police Station. On 2.8.2017 the Police Establishment Board (PEB) held its meeting and recorded that the Special I.G. Kolhapur vide his letter dated 25.7.2017 has stated that several complaints have been received against the Applicant and there is increase in the offences.

Therefore, the Applicant should be transferred out and replaced by another efficient officer (Exhibit R-2 page 32).

16. In support, the Respondent has filed Exhibit R-1 (pages 22 to 28) and letter from Spl. IG to Respondent No.1 at page 29 stating, "There is no control of Applicant on the offenders at Akluj and there is an increase in the number of offences". There is hardly any elaboration of supporting facts to prove negligence or misconduct by the Applicant. Thus the impugned order appears to be based on communication from Spl IG.

17. Perusal of the above record shows that the PEB at the behest of Special IG decided to transfer the Applicant from Akluj Police Station to Control Room. The Respondent no.1 on the same day without holding the PEB has directed the Applicant to work as incharge of Malshiras Police Station. If contentions of the Spl. IG are to be believed, the Applicant was found to be inefficient in controlling the crime at Akluj. If that be so; there is no record to indicate how on the same day the Respondent no.1 considered Applicant to be appropriate to work as in charge of adjoining Malshiras Police Station which has almost identical offences and complications as at Akluj.

18. Perusal of various memos issued by the Additional Superintendent of Police show that these are routine in nature and cannot be concluded as misconduct or negligence on the part of the Applicant. Moreover, if the senior functionaries including Respondent no.1 considered these findings so grave, there was nothing which prevented the Respondent no.1 to proceed against the Applicant departmentally, conduct preliminary enquiry and record his reply. Various memos issued to the Applicant are on record from the month of April, 2017. No action seems to have been taken to rectify the negligence of the Applicant, if any, in a corrective

manner. Hence, the contention of the Applicant that he has been transferred to accommodate Respondent no.2 gains strength.

19. The contention of the Ld. PO that, "Transfer in administrative exigencies ought not be interfered with by courts" as per judgment of the Hon'ble Supreme Court in Somesh Tiwari (supra) does not appear to be relevant since the Applicant succeeds in showing that decision is taken not on the basis of administrative exigencies but to accommodate Respondent no.2. On the other hand, if the transfer is issued in lieu of punishment of his alleged negligence, as the facts in this case indicate, the same is liable to be set aside as illegal, as observed by Hon. Supreme Court in Somesh Tiwari Vs. Union of India & Ors., (2009) 2 SCC 592 (supra).

20. Hence, the Applicant succeeds in showing that the transfer order is vitiated and not based on supporting facts.

21. Original Application is, therefore, allowed and the impugned transfer order dated 2.8.2017 (Exhibit A-1 page 9) is quashed and set aside. The Respondent No.1 is directed to post the Applicant back at Akluj Police Station, District Solapur within fifteen days. No order as to costs.

Sd/-
(P.N. Dixit)
Member (A)
30.7.2018

Dictation taken by: S.G. Jawalkar.