

MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 914 OF 2017

DISTRICT: - AURANGABAD.

Dhiraj Dharmraj Jadhav,
Age 43 years, Occupation: Police Naik,
presently posted at Pishor Police Station,
Taluka Kannad,
District Aurangabad,
R/o 31/2, D-Sector,
Ravi Nagar, N-11, Hudco,
Aurangabad.

.. APPLICANT.

V E R S U S

1. The State of Maharashtra,
Through the Secretary,
Home Department,
Mantralaya, Mumbai-400 032.
2. The Superintendent of Police,
Aurangabad, District Aurangabad.
3. The Inspector General of Police,
Aurangabad Range, Aurangabad. .. RESPONDENTS.

APPEARANCE :- Smt. Amruta Paranjape - Menezes,
learned Advocate for the applicant.

: Shri S.K. Shirse, learned Presenting
Officer for the respondents.

CORAM : JUSTICE A.H. JOSHI, CHAIRMAN

DATE : 12th April, 2018

J U D G E M E N T

Smt. Amruta Paranjape - Menezes, learned Advocate for the applicant and Shri S. K. Shirse, learned Presenting Officer for respondents.

2. Heard both the sides. Perused the record.
3. The case proceeds on the following admitted facts :-
 - (a) Applicant was transferred in Local Crime Branch, where he joined in July, 2015.
 - (b) By the impugned order dated 3.6.2017 the applicant has been transferred and is posted at Pishor Police Station.
 - (c) Applicant's transfer is effected after completion of tenure of 1 year & 11 months.
 - (d) Applicant's statutory tenure is of 5 years.
 - (e) Applicant has not completed 5 years at the earlier station.
 - (f) Transfer of employee by cutting statutory tenure of 5 years is permissible in the event :-
 - (i) the circumstances prescribed in proviso to sub-section (1) of section 22N of Maharashtra Police Act, 1951 exist; or
 - (ii) if the exceptional circumstances as provided in sub-section (2) of section 22N exist, and the competent authority named in section 22N takes the decision.

4. Applicant has pleaded in ground (g) contained in para 6 that, impugned transfer is issued in violation of section 22N of Maharashtra Police Act.

5. Perusal of section 22N (2) of the Act reveals that for enabling the competent authority to order mid-term or mid-tenure transfer any of the circumstances or facts, imperatively, which need to exist, have to be amongst the following :-

- (i) There must on facts exist an exceptional case for basing the Transfer;
- (ii) Transfer must be warranted in public interest; and
- (iii) There must exist an administrative exigency.

6. Applicant's averments relating to violation of law viz. section 22N have been replied by the respondents in para nos. 8, 9, 10 & 11. For ready reference these paras are quoted below:-

“08. As regard to Para No.6 (d) of the Original application, I say and submit that the contents of this Para's is not true and correct because a detailed report and an application about his arrogant behavior with senior officers and about collecting money from illegal activities which is received in this office is found out to be true after a confidential enquiry.

09. As regard to Para No.6 (e) of the Original Application, I say and submit that it is true that applicant is not convicted by court but rest of the Para is denied that because many serious allegations have been received against the applicants.

10. As regard to Para No.6 (f) of the Original Application, I say and submit that the contents of this Para is not true and correct because allegations of misconduct, dereliction of duty, dishonesty etc. against applicant have been received and duly enquired upon and found to be true.

11. As regard to Para No.6 (g) of the Original Application, I say and submit that the contents this Para is admitted hence no comments.”

(Quoted from page 23 of O.A)

7. Copy of minutes of Police Establishment Board is placed on record at page 29. Text, which relates to applicant is quoted below :-

“३. पोना/३५३ धिरज धर्मराज जाधव नेम. स्थागुशा औरंगाबाद ग्रा. - पोना/३५३ धिरज धर्मराज जाधव नेम. स्थागुशा औरंगाबाद ग्रा. यांची स्थागुशा येथे कामगिरी अत्यंत दर्जाहिन आहे. त्यांच्याकामगिरीबाबत वरिष्ठांनी विचारपुस केल्यास ते वरिष्ठांसोबत वाद घालुन उद्दट वर्तन करण्याचे सवईचे आहेत. वरिष्ठ पोलीस अधिकारी यांचेवर दबाव आणण्यासाठी मंत्री, खासदार, आमदार यांना फोन करण्यास सांगतो व दबाव आणतो. तसेच ईतर पोलीस कर्मचारी यांना पण पोलीस अधिकारी यांचे विरुध्द विथावणी देण्याचे सवईचा आहे. तसेच वाळुच्या वाहनाचे हप्ते गोळा करण्याचे काम करत असतात.

मगील दोन वर्षांच्या काळात त्यांचे विरुध्द वाळुचे हप्ते जमा करण्याचे झालेल्या वादा बाबत ब-याच वाहन चालकांच्या तक्रारी आल्या परंतु जाधव यांनी मंत्री, खासदार, आमदार यांचे कडुन वरिष्ठांवर दबाव टाकुन काही एक करावाई होउ दिली नाही. आता पण तो त्याचेकडे असलेले चारचाकी वाहनाने रात्री, अपरात्री पाचोड, पैठण रोडवर वाळुच्या गाडया आडवण्यासाठी फिरत असतो.

तसेच त्यांच्याविरुध्द परत एक निनावी इंग्रजी अर्ज आलेला आहे. सदर इंग्रजी अर्जांमध्ये पोना/३५३ धिरज जाधव हे पैशाचे हप्ते गोळा करुन पोलीस निरीक्षक चाटे यांना देतात असे नमुद आहे. पोना/३५३ धिरज धर्मराज जाधव यांच्या विरुध्द प्राप्त तक्रारीची शहा निशा करुन सदर कर्मचारी यांना स्थागुशा मध्ये नेमणुकीस ठेवल्यास जनहितार्थ योग्य होणार नाही तसेच पोलीस दलाच्या शिस्तीस बाधा पोहचेल आणि प्रशासन सुरळीत

*वाल्किण्याकरीता त्यांची स्थागुशा येथुन पो.ठा. पिशोर येथे बदली करण्याचा आस्थापना
मंडळाने सर्वानुमते निर्णय घेतला.”*

(Quoted from page 30 of O.A.)

8. Respondents have placed on record along with reply, a copy of anonymous complaint written in English (referred to in third para of minutes). 1st and 2nd para of the minutes quoted in foregoing para, reveal acts, which if true are prima-facie, acts of gross misconduct.

9. In support of the narration contained in the minutes of PEB at District Level, confidential report furnished by Shri Kanchan Chate, PI is relied upon.

10. It is pertinent to note that the said report is made on some enquiry believed to be conducted by Shri Kanchan Chate, PI who is the same officer about whom it is alleged in the anonymous complaint in English language that applicant used to pay / share the extorted money.

11. It cannot be understood as to why a report from any officer other than Shri Kanchan Chate was not called.

12. Though this report of Shri Kanchan Chate - PI, is relied before this Tribunal, the minutes do not reveal that, that report was tabled before the Committee and that the committee has considered it.

13. Moreover the tenor of minutes is eloquent. The language used in third para of minutes of PEB suggests that the authority (PEB) has no wish to let the enquiry be conducted, let

the issue escalate and to let the applicant continue on his present posting. However, laudable the object the committee may have in mind, due process cannot be sacrificed or escaped.

14. It has to be borne in mind that Section 22N(1) of Bombay Police Act empowers the competent authority to transfer mid-term if conduct of a police personnel falls in the description of clauses namely:

- (a) for Police Personnel of and above the rank of Deputy Superintendent of Police or Assistant Commissioner of Police a normal tenure shall be of two years at one place of posting;
- (b)
- (c) for Police Officers of the rank of Police Sub-Inspector, Assistant Police Inspector and Police Inspector a normal tenure shall be of two years at a Police Station or Branch, four years in a District and eight years in a Range, however, for the Local Crime Branch and Special Branch in a District and the Crime Branch and Special Branch in a Commissionerate, a normal tenure shall of three years.
- (d) for Police Officers of the rank of Police Sub-Inspector, Assistant Police Inspector and Police Inspector a normal tenure shall be of six years at Commissionerates other than Mumbai, and eight years at Mumbai Commissionerate.”

(These clauses are quoted from S. 22N (1) of the Maharashtra Police Act, 1951)

15. Despite existence of the enabling provision contained in Section 22N(1), it is not resorted, and the transfer is ordered as

well now it is as sought to be justified by relying on section 22N(2) of the Act.

16. Thus, it is evident that for the ground available in section 22N(1), the power under section 22N(2) is resorted purportedly in order to escape the responsibility to initiate disciplinary proceedings.

17. Had the action really to be under section 22N(2) it was imperative on the part of S.P. (Rural) Aurangabad to place on record before Police Establishment Board, the facts which could withstand the description of term 'Exceptional Circumstances', 'public interest' and 'administrative reasons'.

18. The phraseology employed in section 22N(2) is not available for subjective satisfaction. Those conditions are to be fulfilled with the aid of objective material. Objectivity presupposes bringing on record the material, and an enquiry however summary or cursory or preliminary it be, it is an imperative prerequisite. The alleged report made by Shri Kanchan Chate, P.I. cannot be said to fulfill the requirement of investigation or a preliminary enquiry, because Shri Kanchan Chate is the same Officer, who too has been named as a co-delinquent in the same anonymous complaint. Belated reliance on said report appears to be an afterthought and a patchwork.

19. Moreover, the decision of Police Establishment Board is not seen to be based on Shri Kanch Chate's report. Had some enquiry reasonable & fair been done, the criticism of being capricious or based on whims could have been escaped.

20. Be it as it may, however, it cannot be lost sight that the singular that too anonymous un-enquired complaint cannot be acted upon even to transfer a Police Personnel.

21. In the circumstances, it is evident that the impugned transfer order has been issued without application of mind.

22. Hence, impugned order deserves to be quashed and is hereby quashed and set aside.

23. Considering the gravity of matter, the issue of transfer need not be treated as closed. Respondents shall be free to proceed in the matter of enquiry against the applicant and may take a suitable action, which may include the transfer of the applicant.

24. In view of observations contained in foregoing paras, present O.A. is disposed of with no order as to costs.

(A.H. JOSHI)
CHAIRMAN

Place : Aurangabad

Date :12.4.2018

ARJ-O.A. NO. 914-2017 (TRANSFER)