

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.267/2023

DISTRICT:- DHULE

Chandrakant Baburao Paraskar,
Age : 52 years, Occu. : Service as
An Assistant Commandant,
SRDF-SRPF, Nakane Road, Dhule,
R/o. H.No.31/D, SRPF Colony,
Nakane Road, Dhule.

...APPLICANT

V E R S U S

- 1) The State of Maharashtra,
Through: Secretary,
Home Department,
Mantralaya, Mumbai-32.
- 2) Additional Chief Secretary,
Home Department,
Mantralaya, Mumbai-32.
- 3) Additional Director General of Police,
SRPF, SRPF Group-VIII, Camp Area,
Goregaon (East), Mumbai. **...RESPONDENTS**

APPEARANCE :Shri Ajay Deshpande, Counsel for
Applicant.

:Shri M.S.Mahajan, Chief Presenting
Officer for the respondent authorities.

CORAM : JUSTICE P.R.BORA, VICE CHAIRMAN

Decided on : 04-05-2023.

O R D E R :

1. Heard Shri Ajay Deshpande, learned Counsel for the
applicant and Shri M.S.Mahajan, learned Chief Presenting
Officer for the respondent authorities.

2. The applicant has preferred the present O.A. seeking quashment of the order dated 20-03-2023. According to the applicant aforesaid is the order of his transfer though word transfer is not employed in the said order and instead it is described as order of “attachment”. It is the grievance of the applicant that when he has not completed his normal tenure on the post of Assistant Commandant, SDRF at SRPF at Dhule, he has been midterm and mid-tenure transferred to Amrawati. It is the further case of the applicant that his transfer has been ordered in utter disregard of the provisions under Section 22N of the Maharashtra Police Act, 1951. According to the applicant Additional Director General of Police is not the competent authority for making transfer of the applicant. It is the further contention of the applicant that since the applicant holds special status as Assistant Commandant, Disaster Response Force (SDRF), his posting at Amravati vide the impugned order is unjust and illegal. It is further contended by the applicant that there is no provision of attachment in Maharashtra Police Act or in State Reserved Police Force Act. Applicant has alleged that under the garb of attachment, in fact, the applicant has been transferred

from Dhule to Amravati. It is further contended that in the impugned order no reason has been assigned for transfer of the applicant at such a long distance from Dhule. It is the further contention of the applicant that his old aged parents are residing with him. Father is aged 83 years and mother is aged 75 years. Both require constant medical treatment and overall surveillance because of age and ailment they suffer. It is further contended that applicant's elder daughter is pursuing the course of law in the second year at Dhule and his son has appeared for 12th standard examination. In such eventuality according to the applicant, he could not have been transferred that too at such a long distance of 350 k.m. The applicant has, therefore, sought the quashment of the said order.

3. Respondents have opposed contentions raised and prayers made in the application. Respondent No. 3 has filed affidavit in reply. Respondent No. 3 has contended that the departmental enquiry has been initiated against the applicant and the Commandant SRPF Group-9, Amravati has been appointed as Enquiry Officer. It is further contended that following charges levelled against the applicant, are serious in nature. It is further

contended that the applicant has not been transferred to Amravati but he is only attached to the office of SRPF Commandant, Group 9, Amrawati so that the departmental enquiry against the applicant can be conducted in fair and impartial manner. It is further contended that having apprehension that the applicant may tamper with the evidence and pressurize the witnesses to be examined in the departmental enquiry that he has been shifted from Dhule and attached to SRPF Group-9, Amrawati by invoking provision under Section 10(1) of the Bombay State Reserve Police Force Act, 1951 ("SRPF Act" for short)

4. Shri Ajay Deshpande, learned Counsel appearing for the applicant submitted that neither in the Maharashtra Police Act nor in the Bombay State Reserve Police Force Act, there is any provision permitting the "order of attachment" as has been issued in the present matter vide the impugned order. Learned Counsel submitted that though the impugned order is shown to be an order of attachment, in real sense, it is an order of transfer. Learned Counsel further submitted that the Additional Director General of Police is not the competent authority to make transfer of the applicant and hence the impugned

order is non-est being issued by officer not having authority. Learned Counsel submitted that in the impugned order though the order of attachment at Amrawati is stated to be for administrative reasons, now it has come on record that the applicant has been shifted to Amrawati on the ground that the departmental enquiry has been initiated against him and the SRPF Commandant of Group-IX, Amrawati has been appointed as the enquiry officer. Learned Counsel submitted that the impugned order amounts to punishment to the applicant which is impermissible in law. Learned Counsel submitted that the applicant has been transferred in utter violation of the provisions under Section 22N of the Maharashtra Police Act. Learned Counsel submitted that Section 10(1)(a) of the SRPF Act cannot be invoked in the present matter and the impugned order cannot be said to be an order passed under the said provision. Learned Counsel in the circumstances has prayed for setting aside the impugned order.

5. Learned CPO in his arguments reiterated the contentions raised in the affidavit in reply filed on behalf of respondent no.3. Learned CPO heavily relied upon the

provision under section 10(1) of the SRPF Act. He argued that as provided under the said section every SRPF officer is deemed to be always on duty in the State. It was his further contention that as per the said provision the officer can be attached to any SRPF Group in the State and respondent no.3 is the competent person to issue orders under the said provision. Learned CPO submitted that as enlisted in the affidavit in reply there are around 14 charges against the applicant and some of them are of quite serious nature. Learned CPO further argued that apprehending the possibility of tampering of the evidence to be brought in the departmental enquiry against the applicant and considering the possibility of the witnesses being pressurized by the applicant that the applicant has been shifted from Dhule and is temporarily attached to SRPF Group-9 at Amrawati. Learned CPO submitted that aforesaid action has been taken for fair and impartial conduct of the departmental enquiry against the applicant. Learned CPO in the circumstances prayed for dismissal of the application.

6. I have duly considered the submissions made on behalf of the applicant as well as the respondents. As

alleged by the applicant, vide impugned order the respondents have illegally transferred him prior to completion of his tenure at Dhule. As against it, it is the contention of the respondents that it is not an order of transfer but an order of attachment passed by the competent authority under section 10(1) of the SRPF Act. Section 10(1) of the SRPF Act reads thus:

“10. (1) Every reserve police officer shall for the purpose of this Act be deemed to be always on duty in the State of Bombay, and any reserved police officer and any member or body of reserve police officers may, if the State Government or the Inspector General of Police so directs, be employed on active duty for so long as and wherever the services of the same may be required.”

No doubt, the aforesaid provision empowers the State or the Inspector General of Police to employ on duty any reserve police officer at any part of the State; but it is expedient to see in what circumstance such power is to be exercised or can be exercised. As provided in Sub Section (1) itself requirement of services of such officer at the said station is the pre-condition for sending the said officer at the said station. When it is the case of the respondents that the services of the applicant are attached to SRPF Group-9 at Amrawati under the provisions of Section 10(1)

of the SRPF Act, they were under an obligation to provide and explain the circumstances requiring his services at Amrawati. In their affidavit in reply respondents instead of explaining the circumstances making out the requirement of the services of the applicant at Amrawati have come out with a different stand that since the departmental enquiry has been initiated against the applicant, to avoid the possibility of any mischief by the applicant of tampering the evidence and for fair and impartial conduct of the enquiry, the services of the applicant are attached to the SRPF Group-9, Amrawati. From the contentions as have been taken in the affidavit in reply, it is evident that the applicant has been shifted to Amrawati not because his services are required at the said station but for the reason that it was the requirement of the SRPF Group at Dhule to shift the applicant at some other station as the departmental enquiry was initiated against him and there was an apprehension that if he is kept at Dhule he may tamper the evidence and pressurize the witnesses to be examined in the said enquiry.

7. The question is whether the impugned order in the aforesaid facts and circumstances can be held an order under section 10(1) of the SRPF Act ?

8. Perusal of Section 10(1) would reveal that the aforesaid provision is made to enable the State Government or the Inspector General of Police to call upon any reserve police officer or body of the reserve police officers and employ the said reserve police officer or body of the reserve police officers on active duty if any such requirement has arisen at any place in the State of Maharashtra. As defined under section 2(a) of the SRPF Act, active duty means:

“2. In this Act, unless there is anything repugnant in the subject or context,-

(a) “Active duty” means -

(i) the duty to prevent or investigate offences involving a breach of peace or danger to life or property and to search for and apprehend persons concerned in such offences or who are so desperate and dangerous as to render their being at large hazardous to the community;

(ii) the duty to take all adequate measures for the extinguishing of fires or to prevent damage to person or property on the occasion of such occurrences as fires, floods, earthquakes, enemy action or riots and to restore peace and preserve order on such occasions;

(iii) such other duty as may be specified to be active duty by the State Government or the Inspector-General in a direction issued under section 10;”

9. The purpose of making a provision thereby declaring that every reserve police officer shall for the purpose of this Act be deemed to be always on duty in the State of Bombay is that, he may be given call at any point of time even in the midnight and may be directed to proceed at the place where situations as enumerated in the definition of "active duty" has arisen and where his services are required and the officer concerned or the body of such officers can be directed to work so long as their services are required, meaning thereby that if a riotous situation has arisen unless it is brought in control the officers or body of officers have to discharge the duties there.

10. Real import of section 10(1) is as explained by me hereinabove and the aforesaid section cannot be interpreted to mean as has been interpreted by the respondents in their affidavit in reply and by the learned CPO in the arguments advanced by him. Issuance of an order to depute or attach any reserve police officer to any other SRPF Group alike the present applicant on the ground that the departmental enquiry is initiated against him at the station of his posting, thus cannot fall within the purview of Section 10(1) of the SRPF Act.

11. In the aforesaid circumstances, in no case the impugned order can be held to be an order passed under section 10(1) of the SRPF Act and the respondent no.3 could not have invoked the aforesaid provision for shifting the applicant from Dhule to Amrawati on the ground that unless the applicant is shifted from Dhule it would not be possible to conduct the departmental enquiry initiated against the applicant in fair and impartial manner.

12. The next question arises if the impugned order is held not to be an order passed under section 10(1) of the SRPF Act, in which category it falls ? Having considered the words employed in the impugned order and having regard to the contentions raised in the affidavit in reply filed by respondent no.3, there remains no doubt that it is an order of transfer. Obviously, therefore, it has to be examined whether the order has been passed by the competent authority and whether the procedure prescribed under section 22N of the Maharashtra Police Act has been observed or not, for the reason that undoubtedly it is a mid-term and mid-tenure transfer of the applicant.

13. Applicant was posted at Dhule on promotion vide Government order dated 31-05-2022. As provided under section 22N(1), the normal tenure for the applicant on the said post is of two years, however, he has been transferred even before he has completed the period of one year on the said post. Section 22N reads thus:

“22N. Normal tenure at Police Personnel, and Competent Authority

(1) Police Officers in the police force shall have a normal tenure as mentioned below, subject to the promotion or superannuation:-

(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) for Police Constabulary a normal tenure shall be of five years at one place of posting;

(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 be 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;

(e) for Police Officers of the rank of Police Sub-Inspector, Assistant Police Inspector and Police Inspector

in Specialized Agencies a normal tenure shall be of three years.

The Competent Authority for the general transfer shall be as follows, namely:-

<i>Police Personnel</i>	<i>Competent Authority</i>
<i>(a) Officers of the Indian Police Service</i>	<i>Chief Minister;</i>
<i>(b) Maharashtra Police Service Officers of and above the rank of Deputy Superintendent of Police.</i>	<i>Home Minister;</i>
<i>(c) Officers up to Police Inspector</i>	<i>(a) Police Establishment Board No.2;</i> <i>(b) Police Establishment Boards at Range Level,</i> <i>(c) Police Establishment Boards at Commissionerate Level</i> <i>(d) Police Establishment Boards at District Level</i> <i>(e) Police Establishment Boards at the Level of Specialized Agency];</i>

Provided that, the State Government may transfer any Police Personnel prior to the completion of his normal tenure, if,-

- (a) disciplinary proceedings are instituted or contemplated against the Police personnel; or*
- (b) the Police Personnel is convicted by a court of law; or*
- (c) there are allegations of corruption against the Police Personnel; or*
- (d) the Police Personnel is otherwise in incapacitated from discharging his responsibility; or*
- (e) the Police Personnel is guilty of dereliction of duty.*

14. As provided under the aforesaid section it is not that the police person cannot be transferred prior to completion of his normal tenure but then the procedure as prescribed in the aforesaid section has to be scrupulously followed. As provided under proviso to Section 22N(1) a police person can be transferred prior to completion of his normal tenure if disciplinary proceedings are instituted or contemplated against him. However, in that circumstance, order of transfer has to be passed by the State Government. In the instant matter, the impugned order has been passed by the Additional Director General of Police, SRPF, Maharashtra State, Mumbai. It is evident that the said officer was not having any power to transfer the applicant. The impugned order, therefore, has been passed by an officer not competent to pass such order, meaning thereby that it is a non-est order.

15. Assuming that as mentioned in the impugned order, it has been passed on administrative grounds even then the respondents were under an obligation to follow the procedure prescribed under section 22N(2) of the Maharashtra Police Act. As provided in sub section 2 of section 22N, the competent authority for making such

transfer for the officers of the status of the applicant is the Hon'ble Home Minister of the State. It is, thus, evident that since the impugned order has not been passed with the approval of the competent authority, even on that count it has to be held unsustainable.

16. For the reasons elaborated hereinabove the impugned order is held unsustainable and hence deserves to be set aside. In the result following order is passed:

O R D E R

[i] Order dated 20-03-2022 impugned in the present O.A. is quashed and set aside.

[ii] Applicant be reposted to the post from which he has been displaced within a week from the date of this order.

[iii] Original Application is allowed in the aforesaid terms.
No order as to costs.

VICE CHAIRMAN

Place : Aurangabad
Date : 04-05-2023.