

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.638 OF 2016

District : Jalna

Ghansham S/o. Rambhau Palwade,
Age : 55 years, Occ: Service
(as Police Inspector),
C/o. : Police Officers' Club,
Jalna.

...APPLICANT

V E R S U S

1) The State of Maharashtra,
Through its Secretary,
Home Department, M.S.,
Mantralaya, Mumbai-32.

2) The Director General of Police,
M.S., Mumbai.

...RESPONDENTS

APPEARANCE : Shri A.S.Deshmukh learned Advocate for
the applicant.

Smt. Sanjivani Ghate learned Presenting
Officer for respondents

CORAM: HON'BLE SHRI J.D.KULKARNI, MEMBER (J)

DATE: 2nd December, 2016.

J U D G M E N T

(Delivered on 2nd December, 2016)

According to the applicant, he entered service of the
Government of Maharashtra as directly recruited Sub Inspector

on 15-06-1989. He was promoted on the post of Assistant Police Inspector in 2001 and on the post of Police Inspector in 2008. He is due to retire on superannuation on 31-08-2019. Vide impugned order dated 24-05-2016 issued by respondent no.2, the applicant came to be transferred along with number of other P.Is. from Jalna to Gadchiroli. The applicant was transferred to naxalite affected area where he had already served between 10-01-1991 to 30-05-1998 i.e. for about 8 years. The applicant, therefore, filed representation dated 22-07-2016 and requested that his posting at Gadchiroli be cancelled and he be posted considering the administrative convenience at any place either at (1) Solapur (Rural), (2) Jalgaon, (3) Ahmednagar, (4) Latur, or (5) Pune (Rural) etc. Number of Police Inspectors filed representation against the transfer order dated 24-05-2016. Accordingly, respondent no.2 was pleased to modify the posting of at least 3 P.Is. in the Gadchiroli District but did not accept the applicant's request. The applicant finally filed this O.A. for quashing and setting aside his transfer to Gadchiroli.

2. Applicant has prayed that impugned order of transfer dated 24-05-2016 be quashed and set aside as it is against the basic principles of natural justice, equity and good conscience.

It is further prayed that respondents be directed to issue modified order of posting as per representation filed by the applicant dated 22-07-2016.

3. Respondent no.2 filed affidavit in reply and justified the transfer order. It is an admitted fact that the applicant has worked for about 8 years in Yavatmal District which is naxalite affected area. It is further stated that applicant has completed 10 years in Aurangabad range and 4 years at Jalna, and therefore, he has been rightly transferred. It is denied that his transfer is done in violation of any G.R. or circular issued by the Government. It is stated that the posting of the applicant in Gadchiroli District does not mean that he will be sent for active duties in naxalite affected area. Therefore, mere posting in Gadchiroli District cannot be termed as his transfer in naxalite affected area.

4. Applicant files rejoinder affidavit. According to the applicant stand taken by the respondents is contrary to the policy decision taken by the Government as the Government declared certain districts in the State including Gadchiroli as naxalite affected area.

5. Heard Shri A.S.Deshmukh learned Advocate for the applicant and Smt. Sanjivani Ghate learned Presenting Officer for the respondents. Perused memo of O.A., affidavit in reply, affidavit in rejoinder as well as various documents placed on record by the parties.

6. From various documents placed on record as well as from the admitted facts it is clear that the applicant was earlier posted at Yavatmal District for about 8 years and he has worked in active naxalite area. It seems from the record that earlier the applicant was transferred to Gadchiroli District and the said order was challenged by filing O.A.No.142/2001 before Maharashtra Administrative Tribunal at Aurangabad. Stay was granted to his transfer with direction that he be posted for a temporary period in Ahmednagar District and shall be permitted to file representation for his transfer.

7. Learned Advocate for the applicant has invited my attention to one circular dated 14-07-2003 issued by the Special Director General of Police, State Reserve Police Force, Mumbai. In clause 2(d), it has been mentioned as under:

“हृदयविकार, तीव्र मधुमेह, क्षय, कावीळ, ओड्स आणि उच्च रक्तदाब यानी त्रस्त असलेले अधिकारी आणि कर्मचारी

तसेच ५५ वर्षांवरील कर्मचारी यांना अशा प्रकारच्या नक्षलविरोधी बंदोबस्ताकरीता पाठविण्यात येऊ नये.”

Aforesaid guidelines clearly shows that employees who have completed 55 years shall not be posted in naxalite affected area for bandobast.

8. Though learned P.O. states that the applicant may not be given duty of bandobast, however, that itself will not justify the order of transfer of the applicant in naxalite affected area. Applicant has placed on record order passed on 08-07-2016, which is modification order in respect of P.Is. who have been transferred vide impugned order dated 24-05-2016. As per order dated 24-05-2016, as many as 368 officers, including the applicant, have been transferred at various places. Vide modification order dated 08-07-2016 as many as 52 officers' order has been cancelled or modified by respondent no.2. It seems that at Sr.No.36, Madan Vishnu Patil who was transferred from Thane to Gadchiroli has been reposted at Greater Bombay. Officer at Sr.No.39 namely Arun Rakhmaji Bhor who was transferred from Thane to Gadchiroli has been transferred to State Police Control Room, Mumbai and another officer at Sr.No.40 namely H.S. Yadav who was transferred on promotion from Wardha to Gadchiroli has been transferred to

Chandrapur. Applicant's representation, however, has not been considered for the reasons best known to the respondent no.2. Modified order dated 08-07-2016, therefore, seems to be a selective order.

9. As already stated, the applicant has filed representation and the said representation is still pending. Instead of considering his representation, applicant has been kept under suspension. Said suspension order has already been challenged by this applicant by filing O.A.No.665/2016.

10. Learned Advocate for the applicant has also referred to one G.R. dated 6th August, 2002 (A-1, page 19), which gives guidelines for posting of competent officer in naxalite affected areas. As per said G.R., Government of Maharashtra has taken decisions that those officers/employees who have completed age of 50 years, shall not be posted in the naxalite affected areas. Said guidelines have not been considered by the respondent no.2.

11. Perusal of the representation filed by the applicant dated 31-05-2016 shows that the applicant has brought all the facts to the notice of the respondent no.2 and requested that since he

has completed 8 years of service in naxalinte affected areas and as completed 54 years of his age, his transfer to Gadchiroli be cancelled and instead he may be considered for transfer in other places such as (1) Solapur (Rural), (2) Jalgaon, (3) Ahmednagar, (4) Latur, or (5) Pune (Rural) etc. as per administrative convenience. Applicant is not insisting for transfer at any specific place. In such circumstances, respondent no.2 ought to have considered the applicant's request. Instead of considering request of the applicant, he has been kept under suspension for the reason that he did not join at the transferred place. Action taken by the respondent no.2, therefore, seems to be vindictive and in any case, cannot be said to be legal and proper.

12. In view of the circumstances referred above, I pass following order:

ORDER

- (i) O.A. is allowed.
- (ii) Impugned order of transfer of the applicant from the post of P.I. Jalna to Gadchiroli dated 24-05-2016 is quashed and set aside, so far as the applicant is concerned.

- (iii) Respondent no.2 is directed to take appropriate decision on the representation filed by the applicant on 31-05-2016 to transfer the applicant at any place as claimed by the applicant or at any other place, as per the administrative convenience of the respondent no.2.
- (iv) Necessary decision be taken within 4 weeks from the date of this order and shall be conveyed to the applicant in writing.
- (v) In the circumstances, there shall be no order as to costs.

MEMBER (J)