

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 1106 OF 2023
(Subject – Transfer)**

DISTRICT : DHULE

Motiram Tulshiram Nikam,)
Age : 58 years, Occu. : Service Police Inspector,)
R/o : C/O- Vijay Devare, Vikas Nagar, Near)
Vitthal Mandir, Sakri, Taluka-Sakri,)
District-Dhule.)

.... **APPLICANT**

V E R S U S

1. **State of Maharashtra,**)
Through its The Secretary,)
Home Department, Government of)
Maharashtra, Mantralaya, Mumbai.)
2. **The Director General of Police,**)
State of Maharashtra, Police Headquarters,)
Old Council Hall, Shahed Bhagat Sing)
Marg, City Mumbai-PIN-400001.)
3. **The Superintendent of Police,**)
Dhule, District-Dhule.)

... **RESPONDENTS**

APPEARANCE : Shri Sagar Kasar along with Shri Sachin Patil,
Counsel for Applicant.

: Shri M.B. Bharaswadkar, Chief Presenting
Officer for respondent authorities.

CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)

RESERVED ON : **03.04.2024**

PRONOUNCED ON : **10.06.2024**

ORDER

1. Heard Shri Sagar Kasar along with Shri Sachin Patil, learned counsel appearing for the applicant and Shri M.B. Bharaswadkar, learned Chief Presenting Officer appearing for respondent authorities.

2. The present Original Application is disposed of finally with the consent of both the sides at the admission stage itself.

3. By the present Original Application, the applicant is seeking quashment of order dated 13.12.2023 issued by respondent No. 3 *inter alia* transferred the applicant from Sakri Police Station to Control Room, Dhule.

4. Brief facts giving rise to the Original Application are as follows :-

(i) After retirement from Indian Army in the year 2005, the applicant was selected for the post of Police Sub-Inspector in the year 2009. He had worked as PSI at Beed Police Station for the period from 2010 to 2014, at Nanded Police Station from 2014 to 2018 and at Latur Police Station from 2018 to 2022. In the month of February 2022, the applicant came to be promoted on the post of Police

Inspector and transferred to Dhule Control Room, District Dhule.

(ii) It is the further case of the applicant that vide order dated 17.03.2022, the applicant was transferred to Deopur Police Station from Dhule Control Room, District Dhule as in-charge of the said Police Station. However, by order dated 30.06.2023, the applicant was again transferred to District Special Branch, Dhule from Deopur Police Station. By order dated 10.07.2023, the applicant came to be transferred to Sakri Police Station, Dist. Dhule.

(iii) It is the further case of the applicant that while discharging his duties in the jurisdiction of Sakri Police Station about Naka Bandi, the applicant and his subordinate officers had stopped a suspicious vehicle and during the enquiry, a person viz. Sumit Nagare handed over his mobile phone to the applicant. One Tulshiram Gavit, who happened to be the husband of sitting MLA Smt. Manjula Gavit had talk with the applicant stating that complaints against the applicant are increasing. Though the applicant has replied politely, however, the said Gavit spoke arrogantly and used unparliamentarily language and

continued to threaten the applicant by transferring him by conveying it to the Hon'ble Chief Minister.

(iv) It is the case of the applicant that the applicant while performing his duty at Sakri Police Station, by order dated 13.12.2023 he came to be temporarily transferred to Police Control Room, Dhule. Hence, the present Original Application.

5. Learned counsel for the applicant submits that the impugned transfer is perverse, arbitrary, ex-facie illegal and bad in law. Learned counsel submits that the impugned order has not been issued by the competent authority i.e. the Police Establishment Board at District Level and therefore, the same is without jurisdiction.

6. Learned counsel for the applicant submits that the impugned transfer order has been issued abruptly due to political interference, as the applicant while discharging his duties had lodged NC against the husband of sitting MLA, who had threatened the applicant for his transfer. Learned counsel submits that the respondent authorities have not followed the appropriate legal procedure as laid down under Section 22N read

with Section 22J of the Maharashtra Police Act, 1951 while issuing the impugned transfer order.

7. Learned counsel for the applicant submits that the applicant is due to retire in the month of June, 2024. The applicant had joined the Police Department in the year 2009 and till date, there is no adverse remark against him. On the other hand, the applicant has received awards, rewards, appreciations and ACR (A+ and A) for outstanding performance.

8. Learned counsel for the applicant submits that temporary transfer order has been issued on administrative exigencies. The impugned transfer of the applicant is mid-term and mid-tenure transfer, for which no approval has been taken in terms of the provisions of Maharashtra Police Act, 1951.

9. Learned counsel for the applicant submits that the default report dated 30.06.2023 refers the period, when the applicant was posted at Deopur Police Station as in-charge officer and after that he has been transferred to Sakri Police Station. He had joined at Sakri Police Station on 11.07.2023 and worked there almost for five months. There is no relevance or any concern of the said incident with the present case. Learned counsel submits that the applicant has rightly followed the

instructions of the concerned authorities in connection with Crime No. 295/2023 and had completed the investigation of the said crime. The applicant has also filed the final report /charge-sheet of the said crime on 20.11.2023 before the learned JMFC Court, Sakri within a prescribed time.

10. Learned counsel for the applicant submits that there is no substance in the allegations made against him in anonymous complaint applications dated 05.11.2023, 20.09.2023 and undated applications at page Nos. 50, 60 and 64. Learned counsel submits that the applicant denied all the allegations as frivolous and false.

11. Learned Chief Presenting Officer on the basis of affidavit in reply filed on behalf of respondent Nos. 1 to 3 submits that the respondent has issued directions regarding maintenance of Law and Order on the occasion of Bakri-Iid and Aashadhi Ekadashi on 29.06.2023 in District Dhule pursuant to the directions of respondent No. 3 and at that time the applicant was in-charge of Deopur Police Station. He has not worked in accordance with the said directions. Thus, the Police Sub-Inspector in the capacity of Officer attached to the Police Control

Room, Dhule has forwarded default report of the applicant to respondent No. 3 on 30.06.2023.

12. Learned Chief Presenting Officer submits that Sub-Divisional Police Officer, Sub Division Dhule city has forwarded default report of the applicant to respondent No. 3 stating therein that the applicant deliberately avoided to receive important phone calls from senior officials pursuant to the administrative work and consistently showing irresponsible attitude by staying at home, whenever the work of law and order maintenance was going on in district Dhule. Thus, the Sub-Divisional Police Officer, Dhule city has submitted default report against the applicant on 01.07.2023 and recommended to initiate appropriate disciplinary action against the applicant.

13. Learned Chief Presenting Officer submits that the Sub-Divisional Police Officer, Sakri Division, Sakri has forwarded default report of the present applicant on 13.10.2023 contending therein that the applicant has not taken seriously the registration of Crime No. 295/2023 under Sections 302, 504 dated 24.08.2023 registered at Sakri Police Station. The superior officers have been pleased to direct the applicant to proceed with the investigation, but the applicant did not proceed further.

Therefore, the SDPO, Sakri has again forwarded default report against the applicant to respondent No. 3.

14. Learned Chief Presenting Officer submits that the applicant also used to misbehave with the seniors and police staff of Sakri Police Station. Therefore, the staff of Sakri Police Station has forwarded written complaints to Sub-Divisional Police Officer, Sakri on 05.11.2023. The Sub-Divisional Police Officer, Sakri has enquired with the Police Staff of Sakri Police Station and during the course of enquiry, Lady Constable Bakkal No. 1755 viz. Smt. Rashmi Ashok Bhure, Lady Constable Bakkal No. 1174 viz. Rohini Ramesh Suryawanshi and Lady Constable Bakkal No. 1740 viz. Anita Kalu Bhadane have filed their grievance in the form of statement before the Sub-Divisional Police Officer, Sakri regarding misbehavior and abusive language used by the applicant. Therefore, the Sub-Divisional Police Officer, Sakri has again forwarded default report against the applicant to respondent No. 3 on 10.11.2023.

15. Learned Chief Presenting Officer submits that the Sub-Divisional Police Officer, Sakri has again forwarded default reports of the applicant to respondent No. 3 on 13.10.2023 and 10.11.2023 respectively. Due to the law and order situation and

administrative exigencies, the services of the applicant are attached to the Police Control Room Dhule from Police Station, Sakri. Pursuant to the said order, the applicant came to be transferred temporarily on 13.12.2023.

16. Learned Chief Presenting Officer submits that Police Establishment Board came to be formed under Section 22N (1)(2) of the Maharashtra Police Act, 1951 and in its meeting held on 13.12.2023. It was unanimously held by the Members including respondent No. 3 of Police Establishment Board that the order of transfer came to be issued on the ground of default, administrative necessity and in the interest of public at large and the applicant came to be transferred at Police Control Room, Dhule due to the aforesaid default report. One Police Inspector viz. Sanjay Laxman Suryawanshi came to be transferred in place of the applicant at Sakri Police Station and he has already taken a charge of the said Police Station.

17. Learned Chief Presenting Officer submits that in terms of the directives issued by the Election Commission of India on 21.12.2023, the applicant was going to retire on 30.06.2024 i.e. within six months from the date of issuance of the said directives and therefore, he was given the posting at

Police Control Room, Dhule within the same district. Learned C.P.O. submits that there is no substance in the present Original Application and the same is liable to be dismissed.

18. Learned counsel for the applicant submits that if the meeting of the Police Establishment Board was held on 13.12.2023, the details of the said meeting ought to have been reflected in the impugned transfer order dated 13.12.2023. Learned counsel submits that the respondent No. 3 has issued mid-tenure transfer order of the applicant under political influence. Learned counsel submits that the respondent No. 3 and other Board Members have not conducted so called Police Establishment Board meeting allegedly held on 13.12.2023, as on the said date, respondent No. 3 was at Nizampuur Police Station, which is far away. The respondent No. 3's office is almost at a distance of 70-80 kms. Learned counsel submits that it is pertinent to note here that according to the respondents they have received Nivedan of the political party on 13.12.2023 complaining against the applicant and further the said Nivedan is on the letter head of Dr. Tulshiram Gavit, Shivsena District Chief, against whom the applicant had lodged NC at Sakri Police Station on 13.12.2023 at 01.35 a.m. There are criminal cases registered / pending against the said persons, who have filed the

complaints and they have signed the said Nivedan on 13.12.2023.

19. Learned counsel for the applicant submits that the directives of the Election Commission of India have been issued on 21.12.2023 and the impugned mid-term and mid-tenure transfer order came to be issued on 13.12.2023. Therefore, there is no substance in saying that the applicant came to be transferred as per the guidelines of the Election Commission of India. The Additional Superintendent of Police, Dhule in its letter dated 07.01.2024 prepared the list of Police officers, who are eligible for transfer in terms of the directives issued by the Election Commission of India and since the applicant is to be retired in the month of June 2024, he has been exempted from transfer. In the said list, there is a remark in front of the applicant as at present the applicant is working on non-functional branch, but yet not joined. There is no remark of any misconduct or any enquiry pending against him or any offence is registered against him.

20. Learned counsel for the applicant has vehemently submitted that due to NC filed against the husband of sitting MLA, the action has been taken against the applicant

transferring him mid-term and mid-tenure without following the provisions of Section 22N read with Section 22J of the Maharashtra Police Act, 1951. Learned counsel has also vehemently submitted that the said incident with the husband of sitting MLA occurred when the applicant was on duty observing Nakabandi from 12.12.2023 at about 20.00 hours to 13.12.2023 at about 02.00 hours and the said NC came to be lodged on 13.12.2023 itself at Sakri Police Station (Exhibit-E collectively). Learned counsel submits that it cannot be the coincidence that the meeting of the Police Establishment Board was held on 13.12.2023 recommending mid-tenure and mid-term transfer of the applicant. Learned counsel submits that further the directives issued by the Election Commission of India are not applicable to the case of the applicant for the reason that admittedly the applicant is going to retire before the cutoff date i.e. within six months, which shall be reckoned back from 30.06.2024.

21. On careful perusal of the Annexures particularly report submitted by the Sub-Divisional Police Officer, Dhule Rural Division, Sakri (herein after referred to as SDPO, Sakri) dated 20.11.2023, it appears that there are complaints after complaints against the applicant on various grounds. The said

report dated 20.11.2023 is not mere report, but the SDPO, Sakri has also recorded the statement of the persons aggrieved due to the attitude, approach and misconduct of the applicant.

22. The said allegations, for which the SDPO, Sakri has taken a cognizance can be summarized as below :-

(i) Crime No. 396/2023 registered at Sakri Police Station for the offences punishable under Sections 326, 143, 147, 148, 149, 323, 504 of IPC, however, the applicant has levelled additional charge under Section 307 of IPC in connection with the aforesaid crime without giving any intimation to the superiors, nor submitted any special report to the superiors in this regard. It is has been specifically stated that when the SDPO, Sakri has called upon the applicant to explain about it, the applicant has answered arrogantly to SDPO, Sakri and further declined to give information and submit report in connection with the aforesaid addition of Section 307 of IPC in Crime No. 396/2023. Even though it has been directed to the applicant to investigate Crime No. 295/2023 for the offences punishable under Sections 302, 504 of IPC, the applicant has not implemented the said order.

(ii) Though one Shri Navneet Shamrao Sonawane, R/o Dahivel, Tq. Sakri, Dist. Dhule and Smt. Anibani Bhausahab Borse, R/o Erandol, Tq. Erandol, Dist. Jalgaon had been to the Police Station for hearing of the appeal filed under the Right to Information Act, the applicant remained absent in the said hearing and when called upon the applicant to explain about it, talked his superiors in a very arrogant manner.

(iii) On 06.09.2023 and 07.09.2023, Sarpanch of Perejpur / Saltek, Tq. Sakri, Dist. Dhule had been to the Police Station to lodge complaint against one person causing obstruction in the official duties, the applicant has misbehaved with Sarpanch and talked to him in a very arrogant manner and used unparliamentarily language. The said Sarpanch has lodged complaint on his letter pad with the superiors of the applicant insisting for administrative action against the applicant and further declared that he would preferred to go on hunger strike, if the action is not taken on the applicant.

(iv) There are complaints filed by the staff of Police Station, Sakri against the applicant. There are allegations

that the applicant used to refer even to Ledy Constables that they are mental without any head and further abusing them in a filthy language.

(v) There are complaints filed by the Ledy Constables against the applicant, wherein it is alleged that the applicant has threatened the ledy Constables not to disturb in the nigh time, even though in a serious incident happened to take place.

(vi) It has been specifically stated in the said report that because of the approach, attitude and behavior of the applicant, image of the Police Department is maligned in the eyes of public. The applicant is also not behaving with his superiors properly and respectfully. There are statements of the certain persons recorded by the SDPO, Sakri.

23. It appears that the SDPO, Sakri has not only gone through the complaints, but also taken efforts to verify the allegations made therein. Though the applicant has given some explanation about it, however, there is no criteria and this is not a stage while considering the application challenging the transfer order to record certain opinion about it. Suffice to state that the

allegations are of such serious nature supported by the report filed by the superior officers like SDPO, Sakri after verifying the allegations, the default report submitted against the applicant prima-facie appears to be proper and correct.

24. On careful perusal of the minutes of meeting of the Police Establishment Board, I find that the allegations as per the report of the SDPO, Sakri have been recorded in detail in the minutes of the Police Establishment Board meeting dated 13.12.2023 and recommended the transfer of the applicant on non-functional post in the district itself. It is necessary to mention here that neither in the report of SDPO, Sarkri nor in the minutes of the meeting of the Police Establishment Board there is reference about NC filed by the applicant against the husband of sitting MLA nor there is any reference about the complaint filed against the applicant by the husband of sitting MLA for his transfer.

25. So far as directives issued by the Election Commission of India are concerned, though the impugned transfer order of the applicant came to be passed prior to receipt of the said directives, however, it is necessary to be noted that the applicant has not been transferred out of district and

considering his retirement within six months, he has been assigned the duties of non-functioning post i.e. attached to the Control Room.

26. In view of the above discussions, I do not find substance in the present Original Application and the same is liable to be dismissed. Hence, the following order :-

ORDER

- (i) Original Application No. 1106/2023 is hereby dismissed.
- (ii) In the circumstances, there shall be no order as to costs.
- (iii) Original Application is accordingly disposed of.

PLACE : Aurangabad.
DATE : 10.06.2024

(Justice V.K. Jadhav)
Member (J)