

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

ORIGINAL APPLICATION NO. 512 OF 2023

DISTRICT : JALGAON

Jaykumar S/o Ramesh Koli,)
Age : 46 years, Occu. : Service as Police Naik,))
R/O Kandari, Tq. Bhusawal, Dist. Jalgaon.)

.... **APPLICANT**

V E R S U S

1. The Superintendent of Police-Lohmarg,)

N-10 HUDCO, Bharat Mata Chowk,)
Police Colony Road, DCTC Building,)
Aurangabad-431003.)

2. The Police Inspector,)

Railway Police Station, Gandhi Nagar,)
Gadkari Nagar, Bhusawal,)
Tq. Bhusawal, Dist. Jalgaon.)

3. The Assistant Police Inspector,)

Railway Police Station, Nandurbar)
Railway Police Station, Nandurbar,)
Tq. Dist. Nandurbar.)

4. The Sub Divisional Police Officer)

- **Lohmar, Manmad,** Sant Barnaba School,))
In front of Karuna Hospital, Yeola Road,))
Manmad, Tq. Nandgaon, Dist. Nashik.)

... RESPONDENTS

APPEARANCE : Shri Mayur Subhedar, counsel holding for Shri
C.V. Dharurkar, Counsel for Applicant.

: Shri A.P. Basarkar, Presenting Officer for
respondent authorities.

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

DATE : 19.04.2024

ORAL - ORDER

1. Heard Shri Mayur Subhedar, learned counsel holding for Shri C.V. Dharurkar, learned counsel appearing for the applicant and Shri A.P. Basarkar, learned Presenting Officer appearing for respondent authorities.

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

3. The present Original Application about the mid-tenure transfer of the applicant from Bhusawal (Nandurbar) to Manmad by order dated 22.06.2023.

4. Brief facts as stated by the applicant giving rise to the present Original Application are as follows :-

(i) The applicant was appointed as Police Constable in the year 1998. In the year 2001, he was transferred to Bhusawal. In the year 2010, he was transferred from Bhusawal to Manmad. In the year 2016, the applicant came to be transferred from Manmad to Bhusawal. Thereafter, the applicant was promoted as Police Naik. It is further case of the applicant that since May 2016, he was working at Bhusawal.

(ii) According to the applicant, on 17.10.2020 the respondent No. 1 was pleased to transfer the applicant at Aurangabad and the said order of transfer was titled as temporary attachment. On 15.04.2021, the applicant was again transferred from Aurangabad to Nandurbar, where he worked till 22.06.2023 and by impugned order dated 22.06.2023 the applicant came to be transferred from Nandurbar to Manmad. Hence, the present Original Application.

5. Learned counsel for the applicant submits that the applicant had worked at Bhusawal from 30.05.2016 to 16.10.2020 i.e. total period of 4 years and 4 months and thereafter he was transferred to Aurangabad under the title as temporary attached to Aurangabad, where he worked from 17.10.2020 till 14.03.2021 i.e. 149 days. Thereafter, the applicant came to be transferred from to Nandurbar from Aurangabad and he has completed period of service at Nandurbar from 15.04.2021 to 22.06.2023 i.e. 2 years, 2 months and 8 days. Learned counsel submits that at none of the above placed, the applicant has completed his normal tenure and however, by title as temporary attached, the applicant came to be transferred mid-term and mid-tenure.

6. Learned counsel for the applicant submits that in the G.R. dated 23.04.2010, particularly in clause-8, it is specifically stated that the transfer under the title of temporarily attached would amount to transfer, since there is no provision about it in the Rules and Regulations governing the transfer of the police officers. Such order should not be passed and in case if such a Government servant is required to be transferred immediately, he has to be transferred by following the rules and regulations framed in this regard.

7. Learned counsel for the applicant submits that as directed by this Tribunal, the minutes of meeting of the Police Establishment Board dated 21.06.2023 is called. On perusal of the same, it is simply mentioned in para No. 4 that 11 Police Hawaldar of Lohmarg Police Station Nandurbar were due for transfer and accordingly, 10 of them recommended to be transferred. Learned counsel submits that there is no reference by name of the applicant. The applicant has not completed his normal tenure. The reasons for his mid-tenure transfer are also not recorded in the minutes of the meeting of the Police Establishment Board. Learned counsel submits that the impugned transfer order of the applicant is improper, incorrect and illegal and the same is liable to be quashed and set aside.

8. Learned Presenting Officer on the basis of affidavit in reply filed on behalf of respondent Nos. 1 to 4 submits that the applicant was posted at Railway Police Station, Bhusawal from 10.06.2016 and from Bhusawal he was attached first to Control Room Aurangabad and then to Nandurbar. Learned P.O. submits that considering his original place of posting at Nandurbar, the applicant was due for transfer, as he has completed his tenure at Nandurbar and due to administrative exigencies, the applicant could not be accommodated at his place of choice. Learned P.O. submits that if the service period of the applicant counted at Bhusawal as 10.06.2016, he had completed more than 05 years and he was due for transfer in terms of the provisions of Section 22N(b) of the Maharashtra Police Act. Learned Presenting Officer submits that there is no substance in the present Original Application and the same is liable to be dismissed.

9. In para No. 6.8 of the Original Application, the applicant has demonstrated that his frequent transfers under the title of temporary attachment from the year 2016 to 2023. Even though the applicant has been transferred and posted at Bhusawal on 30.05.2016 and he had worked there till 16.10.2020. He had completed 04 years and 04 months only and

he came to be transferred to Aurangabad under the title of temporary attachment and attached to the Control Room, Aurangabad, where he worked for 149 days. It has further pointed out that on 15.04.2021, the applicant came to be transferred from Aurangabad to Nandurbar, where he had worked 2 years, 2 months and 8 days under the same title as temporary attachment. Learned counsel for the applicant has further pointed out that in terms of G.R. dated 23.04.2010, the practice of moving the Government servant from one place to another place under the title of temporary attachment is impermissible and invalid and it is specifically observed in para No. 8 of the said G.R. that the order of said temporary attachment would be considered as transfer order and the same should not be made.

10. In view of above, the tenure of the applicant at Bhusawal cannot be considered from the date of his joining at the place of Bhusawal on 30.05.2016 till he came to be transferred to Manmad under the impugned order. On the other hand under the title of temporary attachment, the applicant came to be transferred firstly to Aurangabad and thereafter to Nandurbar. If the said period at Aurangabad and Nandurbar i.e. (i) 149 days and (ii) 2 years, 2 months and 8 days if excluded, the

total period of the applicant even at Bhusawal is considered, then the applicant has not completed his tenure even at Bhusawal. In view of above, the submission made by the learned Presenting Officer on behalf of the respondent authorities that the applicant's original posting at Bhusawal is the basis for his transfer order, cannot be accepted and the same is liable to be discarded in toto.

11. It appears that the applicant, who is serving as Police Naik, is subjected to frequent transfers under the title of temporary attachment and the Government servant at a lower level are usually voiceless persons.

12. It is pertinent to note here that on perusal of the minutes of the meeting of the Police Establishment Board, there is no reference by name to the recommendation of the transfer of the applicant and the applicant came to be treated as employee due for transfer from Bhusawal by ignoring his temporary attachment posting at Aurangabad and Nandurbar respectively. There is no discussion on that issue in the Police Establishment Board meeting. It is simply stated in the said minutes of meeting of the Police Establishment Board that 11 persons from Lohmarg Police Station Nandurbar are due for transfers and in view of the

same, the Police Establishment Board recommended the transfer of the applicant along with other persons.

13. In view of above discussion, the present Original Application deserves to be allowed by quashing and setting aside the impugned order of transfer dated 22.06.2023. Hence, the following order :-

ORDER

- (i) The Original Application No. 512/2023 is hereby allowed.
- (ii) The order dated 22.06.2023 passed by respondent No. 1 to the extent of transferring the applicant from Bhusawal (Nandurbar) to Manmad is hereby quashed and set aside.
- (iii) The applicant, if relieved and joined his place of transfer at Manmad, he shall be given his original posting at Nandurbar Lohmarg Police Station immediately.
- (iv) In the circumstances there shall be no order as to costs.
- (v) The Original Application is accordingly disposed of.

PLACE : Aurangabad.

DATE : 19.04.2024

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