

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.524 OF 2019

DISTRICT : Mumbai

Shri Sanjay Govind Parab)
Age : 41 Yrs., Working as Police Head)
Constable (Wireless),)
Residing at A1, 3/C/703, Pratiksha)
Nagar, Sion, New Mhada Colony, Mumbai.)...**Applicant**

Versus

1. The Additional Director General of)
Police and Director Police Wireless,)
(M.S.) Pune, O/at Dr. Homi Bhabha)
Road, Chavan Nagar, Pune -8.)
2. Deputy Commissioner of Police,)
Wireless Division, Mumbai. O/at)
New Administrative Building, 20th)
Floor, M. K. Road, Mumbai 32.)
3. The State of Maharashtra.)
Through Additional Chief Secretary,)
Home Department, Mantralaya,)
Mumbai - 400 032.)...**Respondents**

Shri A. V. Bandiwadkar, Advocate for Applicant.

Mrs. Archana B. K., Presenting Officer for Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 20.01.2020

JUDGMENT

1. The Applicant has challenged the impugned transfer order dated 30.05.2019 whereby he was transferred from the establishment of Deputy Commissioner of Police, Wireless, Mumbai to the establishment

W. Kurhekar

of Superintendent of Police, Dhule invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to this application are as under:-

The Applicant is serving on the post of Police Head Constable, Wireless at Mumbai. By order dated 23.08.2016, he was shifted to Control Room. In Control Room, he had not completed his normal tenure but transferred to Malbar Hill Police Station, Mumbai by transfer order dated 19.04.2018. He had challenged transfer order dated 19.04.2018 by filing O.A.No.16/2019 contending that transfer being mid-term and mid-tenure is illegal in the light of provisions of Maharashtra Police Act, 1951 (hereinafter referred to as 'Act of 1951' for brevity). In the meantime, D.E. was initiated against him for alleged misconduct in which punishment of withholding of two increments without affecting future increment was imposed by order dated 06.12.2018. The Applicant has filed appeal against the punishment order which is subjudice before the Appellate Authority. Insofar as O.A. No.16/2019 is concerned, it was disposed of by Tribunal on 20.03.2019 in view of cancellation of transfer order dated 19.04.2018 by the Respondents. Resultantly, he was reposted in Police Control Room. However, again he was transferred by impugned transfer order dated 30.05.2019 from Mumbai to Dhule on the ground of default report attributing certain misconduct to him. The Applicant has challenged this transfer order dated 30.05.2019 by filing present O.A. contending that the same is unsustainable in law on the grounds which will be discussed little later.

3. Shri A. V. Bandiwadekar, learned Counsel for the Applicant sought to assail impugned transfer order mainly on following grounds:-

(A) The Police Establishment Board (PEB) purportedly transferred the Applicant is not legally constituted the PEB in absence of member from the backward class in PEB and

for want of absence of Notification by State Government in Official Gazette.

(B) By impugned transfer order, the Applicant is transferred to Dhule for alleged misconduct (default report) for which he is already subjected to punishment in departmental proceeding, and therefore, the order of transfer amounts to double punishment and unsustainable in law.

4. Per contra, Smt. Archana B. K., learned Presenting Officer sought to justify the impugned transfer order on the ground that Applicant was overdue for transfer and in view of default report also his transfer was necessitated. She submits that PEB headed by Additional Director General of Police, Wireless, Pune in its meeting dated 30.05.2019 considered the default report as well as completion of tenure of the Applicant, and therefore, transfer cannot be said punitive or malafide. As regards absence of Notification of PEB, she fairly concedes that there is no such Notification of said PEB in Official Gazette.

5. In view of above, question posed is whether the impugned transfer order is in accordance to provisions of Maharashtra Police Act and sustainable in law.

6. Needless to mention that transfer is an administrative order and it being incident of service, it should not be interfered with by the Tribunal unless the same is in contravention of express provisions of law, punitive or colorable exercise of power.

7. Though the matter of transfer exclusively fall within the domain of executive, now in view of amendments in 'Act of 1951', in pursuance of directions given by Hon'ble Supreme Court in **(2006 (8) SCC 1 (Prakash Singh Vs. Union of India & Ors.)**, the transfers of Police Personnel are governed and strictly regulated by the provisions of Maharashtra Police

Archana B. K.

Act and it is not left to the whims or discretion of the executive. In **Prakash Singh's** case, the Hon'ble Supreme Court directed for the establishment of PEB in each State to deal with transfers, postings and other service related matter of Police Personnel. It is in pursuance of these directions, various amendments were made in 'Act of 1951'. As per the amendment in 'Act of 1951', the amendments were incorporated in Section 22 of 'Act of 1951' and PEBs are established at various levels.

8. Suffice to say, the transfers being now regulated by 'Act of 1951', the executive is required to ensure that the PEBs are constituted strictly adhering to the statutory provisions, so that the legislative intent is fulfilled the origin of which is in the directions given by the Hon'ble Supreme Court in **Prakash Singh's** case. In other words, the necessity was felt to streamline and regularize the service related matter of the Police Personnel and to make it transparent so as to keep nepotism and favourism at bay, the PEB at various levels were established and the manner in which the same is required to be constituted and notified in the Official Gazette have been expressly provided by amendment in the 'Act of 1951'.

9. Now turning to the facts of the present case, material to see the contents of Minutes of PEB dated 30.05.2019 under which Applicant has been transferred from Mumbai to Dhule. Minutes are at Page Nos.98 of Paper Book. Admittedly, the Applicant is serving in Wireless department. Though the PEB at various levels were constituted and established in terms of Section 22 of Maharashtra Police Act, there was no reference of establishment of PEB for Wireless department. It is for this reason there is a reference in Minutes dated 30.05.2019 that Wireless department had already forwarded the proposal to the Government on 20.11.2015 to include Wireless department in definition of specialized agencies under Section 2(14A-1) of 'Act of 1951'. Material to note that for service related matters, specialized agencies at level of specialized agencies were required to be constituted in terms of Section 22J-3 of 'Act of 1951'.

10. Here, it would be apposite to reproduce Section 2(14A-1) and Section 22J-3 of 'Act of 1951', which are as follows:-

2(14A-1) : Specialised Agencies” means Crime Investigation Department, State Intelligence Department, Protection of Civil Rights, Anti -Corruption Bureau, State Reserve Police Force, Anti-Terrorist Squad, Highway Traffic and Training Directorate.”

22J-3. Police Establishment Board at Levels of Specialized Agencies

(1) The State Government shall, by notification in the *Official Gazette*, constitute for the purposes of this Act, a Board to be called the Police Establishment Board at the Levels of Specialized Agencies, namely Crime Investigation Department, State Intelligence Department, Protection of Civil Rights, Anti-Corruption Bureau, State Reserve Police Force, Anti-Terrorist Squad, Highway Traffic and Training Directorate.

(2) The Police Establishment Board at the Level of Specialized Agencies shall consist of a Chairperson, as the Head of the concerned Specialized Agency and three senior-most Police Officers of that Specialized Agency.

Provided that, if none of the aforesaid members is from the Backward Class, then the concerned Head of the Specialized Agency shall appoint an additional member of any senior most Police Officer belonging to such class.

Explanation.- For the purpose of this sub-section, the expression “Backward Class” means the Scheduled Castes, Scheduled Tribes, De-notified Tribes (*Vimukta Jatis*), Nomadic Tribes, Special Backward Category and Other Backward Class.

11. Though Additional Director General of Police, Wireless had forwarded the proposal to Government on 20.11.2015 there was no response to it. The Additional Director General of Police, Wireless, therefore, constituted committee i.e. PEB at his level headed by himself with four members as contemplated under Section 22J-3 of Maharashtra Police Act which provides for establishment of PEB for specialized agencies. The said Committee/PEB resolves to transfer the Applicant in view of default report received from Deputy Commissioner of Police, Wireless Mumbai. Thus, the fact remains that there is no Notification of the constitution of said PEB by State Government in Official Gazette. Besides there is nothing on record to show that one of the member of

W. D. M. S.

PEB is from backward class as mandated under provisions of Maharashtra Police Act. There has to be member from backward class in all PEB constituted at all levels and if none of the member of PEB belongs to backward class then additional member from the backward class is required to be appointed. However, in the present case, the record does not indicate whether any of the members of the said PEB was from backward class. Secondly, there is no publication of constitution of said PEB by the State Government in its official gazette.

12. Publication of PEB in the Official Gazette by State Government with one member from backward class is mandatory requirement as explicit from the word used 'shall' in Section 22J-3 of 'Act of 1951'. As such it is not discretionary but mandatory requirement of law. Needless to mention that, when legislature provides for doing particular thing in a particular manner, then it has to be done in that manner only so as to comply the express provisions of law. However, in the present case, admittedly, there is no publication of PEB which purportedly resolved to transfer the applicant in Official Gazette which in my opinion is fatal to the respondents as the decision taken by such committee which is not formed in accordance to mandatory provisions of law cannot be said legal and valid. In other words, Notification of PEB with one of the member of backward class in its official gazette is *sine-qua-non* for the sustainability of the decision taken by such committee and in absence of it, the order passed by such committee are quite vulnerable in law.

13. In view of above discussion, there is no alternative except to conclude that transfer order of the Applicant is not sustainable in law for non-adherence of compulsory requirement of law.

14. Insofar as the submission advanced by the learned Counsel for the Applicant that the Applicant was already subjected to punishment in D.E. for the alleged misconduct, and therefore, the order of transfer on the same allegation of misconduct is punitive is concerned, I find no

merit therein. True, the Applicant was subjected to punishment in D.E. while he was serving at Mumbai and it is on this background, he was transferred from Mumbai to Dhule. He was held guilty in departmental proceeding. As such, it is in the light of proved misconduct, PEB thought it appropriate to transfer him to Mumbai. Apart, as per Minutes of PEB he was overdue. As such, this is not a case where transfer was affected on unsubstantiated complaint where it can be termed as punitive transfer. Suffice to say in present case, it cannot be said that transfer amounts to double punishment as sought to be canvassed by the learned Counsel for the Applicant.

15. Though, the impugned order cannot be termed punitive it is not sustainable in law in view of non compliance of mandatory provisions of Section 22J-3 of 'Act 1951'. The PEB which had recommended itself is not legally constituted PEB for the reasons discussed above. The Tribunal has therefore no alternative except to quash the impugned transfer order.

16. The totality of the aforesaid discussion leads me to conclude that impugned transfer order is not sustainable in law and deserves to be quashed. Hence the following order.

ORDER

- (A) Original Application is allowed.
- (B) Impugned transfer order dated 30.05.2019 qua the Applicant is quashed and set aside.
- (C) The Respondents are directed to reinstate the Applicant on the post he was transferred from within two weeks from today.
- (D) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Place : Mumbai
Date : 20.01.2020
Dictation taken by : VSM