

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.57 OF 2019

DISTRICT : PUNE

Shri Amol Namdev Khude.)
Age : 32 Yrs., Working as Police Constable,)
Police Headquarter, Pune and residing at)
Vikas Nagar, Old Parshi Bungalow, Dehuroad,)
Pune – 412 101.)...Applicant

Versus

1. The State of Maharashtra.)
Through Additional Chief Secretary,)
Home Department, Mantralaya,)
Mumbai 400 032.)
2. The Additional Commissioner of Police.)
Pimpri Chinchwad Police Commissionerate)
Premlok Park, Chinchwad,)
Pimpri-Chinchwad, Pune – 411 033.)
3. The Commissioner of Police.)
Police Headquarter, Pune City, Pune.)...Respondents

Mrs. Punam Mahajan, Advocate for Applicant.

Mr. A.J. Chougule, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 15.03.2019

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JUDGMENT

1. The Applicant has challenged the transfer order dated 17.11.2018 passed by the Commissioner of Police, Pimpri-Chinchwad, thereby transferring / repatriating the Applicant to the office of Police Commissioner, Pune 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 was working as Police Constable on the establishment of Police Commissioner, Pune. On 28.05.2018, the Government of Maharashtra has created new Police Commissionerate viz. Pimpri-Chinchwad Police Commissionerate. In view of it, the Commissioner of Police, Pune transferred 1669 Police Personnel on the establishment of Police Commissionerate, Pimpri-Chinchwad including the Applicant by order dated 12.09.2018. Thus, since 12.09.2018, the Applicant was working on the establishment of Commissioner, Pimpri-Chinchwad. However, abruptly, by order dated 17.11.2018, the Commissioner of Police, Pimpri-Chinchwad transferred the Applicant from Pimpri-Chinchwad Commissionerate to Police Commissionerate, Pune City. The Applicant has challenged the said transfer order dated 17.11.2018 on the ground that it is mid-term as well as mid-tenure transfer without recommendation of Police Establishment Board (PEB). He further contends that there is no Notification in the Official Gazette regarding the establishment of PEB at Pimpri-Chinchwad. Therefore, the impugned order is in violation of provisions of Maharashtra Police Act.

3. The Respondent No.2 resisted the application by filing Affidavit-in-reply (Page Nos.38 to 47 of Paper Book) *inter-alia* denying that the impugned order suffers from any illegality. The Respondent No.2 sought to contend that the

impugned order is nothing but repatriation of the Applicant to Police Commissionerate, Pune on administrative ground, and therefore, does not amount to transfer. As regard establishment of PEB, the Respondent No.2 contends that the same has been established by order dated 05.09.2018. With these pleadings, the Respondent No.2 prayed to reject the O.A.

4. Smt. Punam Mahajan, learned Advocate for the Applicant urged that the issue involved in the present matter is already covered by the Judgment passed by this Tribunal in ***O.A.843/2018 (Ajay R. Bhapkar Vs. Additional Commissioner of Police, Pimpri-Chinchwad) decided on 01.01.2019***, wherein in similar situation, the impugned transfer order was set aside.

5. Per contra, Shri A.J. Chougule, learned Presenting Officer sought to contend that the impugned order dated 17.11.2018 is nothing but repatriation, and therefore, does not amount to transfer in the eye of law.

6. Now, the question arises whether the impugned order dated 17.11.2018 is mere repatriation to the original department or it is a transfer in the eye of law. Material to note that, though the Respondent No.2 sought to contend that the PEB has been established, there is absolutely no pleading that the impugned order has been approved by PEB. Despite the opportunity, the Respondent No.2 failed to place on record the minutes of PEB. All that, the Respondent No.2 has produced a copy of order dated 05.09.2018 which shows that the PEB is established at Police Commissionerate, Pimpri-Chinchwad w.e.f. 15.08.2018 under the chairmanship of Police Commissioner, Pimpri-Chinchwad.

7. At this juncture, it would be apposite to refer relevant provisions of Maharashtra Police Act. As per Section 22N(1)(b), the normal tenure of Police Constabulary shall be of five years at one place of posting. Whereas as per

Section 2(6)(a), the general transfer is defined as posting of Police Personnel in the Police Force from one post, office or department to another post, office or department in the month of April and May of every year after completion of normal tenure as mentioned in Sub-section 1 of Section 22N. "Mid-term transfer" is defined in Section 6(b) and it meant transfer of Police Personnel in the Police Force other than the general transfer. As such, the reading of these provisions together makes it quite clear that, if Police Personnel is posted from one post, office or department to another post, office or department other than in the month of April and May of every year, it has to be termed as "Mid-term transfer".

8. The procedure for general transfers as well as mid-term transfers are governed by Section 22N. In so far as the transfers at Police Commissionerate level is concerned, the competent authority for general transfer is PEB at Commissionerate level. As regard mid-term or mid-tenure transfer, Section 22N(2) provides that in exceptional cases, in public interest and / or on account of administrative exigency, the competent authority is empowered to make mid-term transfer of any Police Personnel. Furthermore, as per proviso, the State Government may transfer any Police Personnel prior to the completion of his normal tenure in following cases.

- "(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 incapacitated from discharging his responsibility; or
- (e) the Police Personnel is guilty of dereliction of duty."

9. The aforesaid provisions were incorporated in Maharashtra Police Act by way of amendment in 2015 in view of the directions given by Hon'ble Supreme Court in case of *Prakash Singh and Ors. Vs. Union of India & Ors. : (2006) 8 SCC*

1. These amendments were made to ensure minimum tenure of Police Personnel with an object that they should function without fear or favour and they shall not be subjected to indiscriminate transfer or shifting as per the whims of the authority concerned.

10. Now, turning to the facts of present case. Though the Respondents sought to contend that the impugned order dated 17.11.2018 is mere repatriation and not transfer in eye of law, it is nothing but misconceived and fallacious. Admittedly, by order dated 12.09.2018, the Applicant along with other Police Personnel were transferred to the office of newly created Police Commissionerate Pimpri-Chinchwad and since then, they became part and parcel of this new establishment. They were discharging their duties under the control of Commissionerate of Pimpri-Chinchwad with effect from 12.09.2018. This being the factual position, the Applicant cannot be transferred or shifted back without compliance of the provisions of Section 22N of Maharashtra Police Act. Once the Applicant has become part and parcel of the establishment of Commissioner of Police, Pimpri-Chinchwad, he cannot be sent back by mere colouring it as a repatriation to the original Department. In the eye of law, it is transfer from one Department to another Department and furthermore, it being made before completion of 5 years normal tenure, it has to be termed as mid-term as well as mid-tenure transfer.

11. Once the impugned order is held as a transfer, the second question would naturally come whether it is preceded by the recommendation of PEB. Though the Respondents has produced letter dated 05.09.2018 to show that PEB has been formed at Pune Police Commissionerate, Pimpri-Chinchwad w.e.f. 15.08.2018, significantly the minutes of PEB recommending the transfer of the Applicant is not forthcoming. Therefore, it cannot be assumed that there was no such meeting of PEB recommending the name of Applicant for his transfer. In other words, it is a case of adverse inference to be drawn for non-producing the

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minutes of PEB for the perusal of Tribunal. Suffice to say, in absence of recommendation of PEB, the impugned order cannot be sustained.

12. Secondly, as rightly pointed out by learned Advocate for the Applicant that there is no publication of establishment of PEB at Pimpri-Chinchwad Police Commissionerate in Official Gazette as mandated by Section 22-I(1) which mandates that the State Government shall by Notification in Official Gazette constitute a Board to be called "Police Establishment Board" at Commissionerate level for the purposes of Act. In the present case, the Respondents have simply produced one letter dated 05.09.2018 which merely shows formation of PEB and nothing more. The Respondents have not produced the copy of Official Gazette wherein it requires to be notified as mandated by Section 22-N(1) of Maharashtra Police Act.

13. In fact, in similar situation in the O.A.843/2018, the Tribunal quashed the impugned transfer order and the decision has attained the finality. Therefore, the observation recorded in O.A.843/2018 are squarely applicable in the present case and I see no reason to deviate from it.

14. The necessary corollary of the aforesaid discussion leads me to conclude that the impugned order dated 17.11.2018 cannot be termed as mere repatriation and it amounts to transfer from one Commissionerate to another Commissionerate. It is *ex-facie* untenable having been in contravention of provisions of Section 22-N of Maharashtra Police Act, as adverted to above. The impugned order, therefore, liable to be set aside. Hence, the following order.

ORDER

(A) The Original Application is allowed.

- (B) The impugned order dated 17.11.2018 is hereby quashed and set aside.
- (C) The Applicant be reposted on the establishment of Pimpri-Chinchwad Police Commissionerate within one month from today.
- (D) No order as to costs.


(A.P. KURHEKAR)
Member-J

Mumbai

Date : 15.03.2019

Dictation taken by :

S.K. Wamanse.

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