

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO. 694 OF 2016

DISTRICT : THANE

Tejrao Laxman Wankhede)
Sub Inspector of Police)
Posted at: R.B.I. Security Branch,)
C.B.D. Belapur,)
O/o Commissioner of Police,)
Navi Mumbai.)...**Applicant**

VERSUS

1. The State of Maharashtra)
Through: The Additional Chief Secretary,)
Home Department, Mantralaya,)
Mumbai - 400 032.)
2. The Director General of Police,)
State of Maharashtra,)
Shahid Bhagatsingh Marg, Mumbai - 32.)
3. The Commissioner of Police)
Navi Mumbai, Sector 29, C.B.D. Belapur)
Navi Mumbai, 400 614.)...**Respondents**

Shri A.R. Joshi, learned Advocate for the Applicant.

Smt K.S. Gaikwad, learned Presenting Officer for the Respondents.

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CORAM : Shri Rajiv Agarwal, Vice-Chairman

DATE : 25.01.2017

J U D G E M E N T

1. Heard Shri A.R. Joshi, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

2. This O.A. has been filled by the Applicant challenging his transfer dated 31.07.2015 from Rabale Police Station in Navi Mumbai to R.B.I., (Security / Special Branch) on the ground that he had made a request for such transfer when he didnot make such a request. The Applicant was earlier transferred from Traffic Branch to Rabale Police Station by order dated 28.07.2015. The Applicant has challenged that order dated 28.07.2015 also.

3. Learned Counsel for the Applicant argued that the Applicant was posted to Navi Mumbai Police Commissionarate on 30.06.2014. He was posted to Traffic Branch, Rabale. The Applicant was transferred from Traffic Branch to Rabale Police Station, Rabale by order dated 28.07.2015, though he had not completed his tenure of 3 years in that branch. He was again transferred on 31.07.2015 from Rabale Police Station to R.B.I. (Security / Special Branch). Learned Counsel for the Applicant argued that he made a number of representations dated 11.08.2015,

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01.03.2016 and 10.06.2016 against his illegal transfer, but no cognizance was taken by the Respondent. Learned Counsel for the Applicant argued that both the orders dated 28.07.2015 and 31.07.2015 have been issued on administrative ground. Such orders which are mid-term transfer orders cannot be issued on administrative grounds. Such mid-term transfers can be ordered only in exceptional cases, in public interest and an account of administrative exigencies under section 22 N (2) of the Maharashtra Police Act (M.P.A.). Learned Counsel for the Applicant argued that a mere default report by a superior officer cannot be said to be sufficient to hold a police personnel guilty of dereliction of duty. Such a charge can be proved only in a Departmental Enquiry. The impugned transfer orders are violative of section 22 N (2) of M.P.A. and are liable to be quashed.

4. Learned Presenting Officer (P.O.) argued that a default report dated 11.06.2015 submitted by Deputy Commissioner of Police, Traffic was received by the Respondent No. 3. The said report was considered by the Police Establishment Board at Commissionarate on 28.07.2015 along with D.O. letters against the Applicant and the Board decided to transfer the Applicant from Traffic Branch to Rabale Police Station. The next transfer dated 31.07.2015 by mistake mentioned that the Applicant was transferred on his request. It was thought fit to again transfer the Applicant in the security of R.B.I.. Learned P.O. argued that the Applicant

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has been transferred in full compliance of the provision of the M.P.A.

5. It is seen that the Applicant was transferred by order dated 28.07.2015 from Traffic Branch to Rabale Police Station. The order reads as follows:

“विषय: सपोनि/ पोउनि यांचे तैनाती बाबत-

खाली नमूद केले सपोनि/ पोउनि यांना प्रशासकीय कारणास्तव त्यांचे नांवासमोर नमूद केले ठिकाणी आस्थापना मंडळा चे शिफारसीनुसार पुढील आदेशापर्यंत तैनात करणत येत अहे.”

The name of the Applicant is at Sr. No. 57. It is not mentioned that the Applicant was transferred due to default report against him. There is no mention that there were any special circumstances for his transfer or that he was found guilty of dereliction of duty. In the affidavit in reply dated 22.08.2016, the Respondent No. 3 has stated in para 3 (iii), that:

“(iii) It is submitted that, on 11.06.2015, the Deputy Commissioner of Police, Traffic Branch, Navi Mumbai, who is administrative head of the Applicant, submitted Default Report of the applicant citing the incidences of dereliction of duties and the D.O. Letters of his sub-ordinate officers about the in-disciplined behavior of the applicant while dis-charging the duty. **Annexed hereto marked as Exhibit “R-1” (colly) is copy of the Default Report of the applicant, dated 11.06.2015 submitted by DCP, Traffic to Respondent No. 3.**”

The Default report dated 11.06.2015 is annexed as R-1.

It is mentioned therein that:

“संदर्भ क्र. 9 कडील अ.शा.पत्राद्वारे पोलीस निरीक्षक, रबाले वाहतूक शाखा यांनी पोउपनि. तेजराव वानखेडे यांचेविरुद्ध तक्रार केली असून त्यांची इतरत्र बदली होणेबाबत विनंती केली आहे, त्याचप्रमाणे संदर्भ क्र. २ कडील अ.शा.पत्रान्वये सपोआ, वाहतूक यांनी देखील त्यांना विनाकारण

रात्री-अंपरात्री दारुच्या नशेत फोन करून बडबड केलेबाबत कळविले आहे. तसेच यापूर्वी ते नेमणुकीस असलेल्या खारघर वाहतूक शाखेचे प्रभारी अधिकारी सपोनि एस.पी. साळगांवकर यांचेकडे चौकशी केली असता त्यांनी देखील पोउपनि वानखेडे हे दारुच्या नशेत रात्री-अंपरात्री फोन करून त्रास असलेबाबत सांगितलेले आहे. तसेच नमूद पोलीस उपनिरीक्षक वानखेडे यांना स्ट्रींग ऑपरेशन करण्याची सवय असल्याचे खात्रीशीर समजले आहे. ”

6. It is clear that the default report mentions that the Applicant is a habitual drunkard and also is in the habit of conducting '**sting**' operations. How this report can lead to conclusion that the Applicant was guilty of dereliction of duty is difficult to comprehend when no enquiry was conducted in such allegations against the Applicant. Such unsubstantiated reports cannot be termed as exceptional circumstances to transfer any Government Servant. The submission of the Respondent No. 3 in para 3 (iii) of affidavit in reply has to be firmly rejected.

7. From other D.O. letters, it appears that the superiors to the Applicant did not like his habit of conducting sting operations. The Respondent No. 3 has not placed the minutes of the Establishment Board on record. It cannot be said that the Board considered the default report. It cannot be said that the Applicant was guilty of dereliction of duty. Such a finding can come out only after a Departmental Enquiry is held against a Government Servant. This was the ground on which the Applicant was transferred as mentioned in the Affidavit-in-Reply. As it is not correct to hold the Applicant guilty of dereliction of duty, the Applicant's transfer order dated 28.07.2015 was in complete violation of

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provisions of section 22 N (2) of M.P.A. and this transfer order dated 28.07.2015 cannot be sustained.

8. As regard order dated 31.07.2015, it is stated that the order was passed based on the same default report. How a police personnel can be transferred twice on the same report, within 3 days is not understood. This order is clearly arbitrary. When the transfer order dated 28.07.2015 is unsustainable, the order dated 31.07.2015 is nothing but abuse of powers by the Respondents.

9. Having regard to the aforesaid facts and circumstances of the case, transfer orders dated 28.07.2015 and 31.07.2015 qua the Applicant are quashed and set aside. The Respondents are directed to post the Applicant back to Traffic Branch within 7 days from the date of this order. This O.A. is allowed accordingly with no order as to costs.

Sd/-

(RAJIV AGARWAL)
(VICE-CHAIRMAN)
25.01.2017

Date : 25.01.2017

Place : Mumbai

Dictation by : NMN

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