

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1091 OF 2018

DISTRICT : PUNE

Shri Joytikumar Vilas Kadam.)
Age : 45 Yrs., Working as Police Hawaldar,)
Residing at Sector No.63/3, Kedar Nagari,)
Wanowri, Pune.)...Applicant

Versus

1. The State of Maharashtra.)
Through Addl. Chief Secretary,)
Home Department, Mantralaya,)
Mumbai – 400 032.)
2. The Commissioner of Police.)
Pune City, Camp, Pune – 411 001.)...Respondents

Mrs. Punam Mahajan, Advocate for Applicant.

Ms. N.G. Gohad, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 12.04.2019

JUDGMENT

1. In the present Original Application, the challenge is to the impugned order dated 29th November, 2018 whereby the Applicant (Police Constable) has been transferred from Traffic Branch, Pune to Head Quarter 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 as Police Constable on the Establishment of Respondent No.2 – Commissioner of Police, Pune. He was transferred to Traffic Branch on 09.11.2015 and since then, worked there till the impugned order dated 29.11.2018. He being in the cadre of Police Constable, his normal tenure is five years as contemplated under Section 22-N of Maharashtra Police Act, 2015 (hereinafter referred to as 'Act 2015'). However, by impugned order dated 29.11.2018, he has been transferred mid-term from Traffic Branch to Head Quarter. The Applicant has challenged the impugned order contending that the transfer being on the ground of complaints is punitive and *malafide*. He further contends that the constitution of Police Establishment Board (PEB), which approved the transfer suffers from material illegality, as the same is not headed by Commissioner of Police as required by law. Besides, there is no Notification of the constitution of PEB in Official Budget with one Member from Backward Class. There is no compliance of Circular dated 07.01.2016, which *inter-alia* provides that the enquiry into alleged complaint with observance of principles of natural justice for transfer based on the complaint. On these pleadings, the Applicant prayed for setting aside the impugned order and for posting at Traffic Branch.

3. The Respondents resisted the application by filing Affidavit-in-reply (Page Nos.19 to 34 of Paper Book) *inter-alia* denying the entitlement of the Applicant to the relief claimed. The Respondents denied that the impugned transfer order suffers from any illegality or malice. It is not in dispute that the Applicant has not completed five years normal tenure at Traffic Branch. The Respondents sought to justify the transfer contending that, while the Applicant was deputed at Visharambaug Traffic Division, he was found not discharging duties properly and was indulging in the activities subversive to the discipline of the Department. Therefore, the preliminary enquiry was conducted and in view of submission of

default report, the matter was placed before the PEB. Accordingly, the PEB in its meeting resolved to transfer of the Applicant to Head Quarter to maintain discipline in the Department. As such, the Applicant was transferred in public interest and on account of administrative exigency, invoking Section 22-N(2) of 'Act 2015'. The Respondents denied that there is any infirmity or illegality in the constitution of PEB. The Respondents in this behalf referred to certain decisions in its reply, which will be dealt with during the course of discussion.

4. Smt. Punam Mahajan, learned Advocate for the Applicant assailed the impugned transfer order contending that, it being mid-term or mid-tenure transfer, there has to be compliance of Section 22-N(2) of 'Act 2005', which is lacking in the present matter because of illegal constitution of PEB at Commissionerate level and secondly, it is punitive transfer without proper compliance of Circular issued by Director General of Police, dated 07.10.2016. She further canvassed that, in absence of Notification of constitution of PEB in the Official Gazette, the decision taken by PEB suffers from material illegality in addition to the illegality in constitution of PEB itself.

5. Per contra, Ms. N.G. Gohad, learned Presenting Officer sought to justify the impugned transfer order contending that, in view of complaints against the Applicant, his transfer was necessitated and accordingly, the PEB at Commissionerate level approved the decision. She, therefore, sought to contend that there is compliance of Section 22-N(2) of 'Act 2005'.

6. Admittedly, the Applicant had not completed five years normal tenure at the time of impugned transfer order, and therefore, it being mid-term and mid-tenure transfer, there has to be compliance of Section 22-N(2) of 'Act 2015'. For such mid-term and mid-tenure transfer, the Competent Authority is PEB at Commissionerate level.

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7. The foremost challenge pertains to the constitution of PEB, which approved the transfer of the Applicant in the present matter. Therefore, it would be apposite to reproduce Section 22-N (I) of 'Act 2015', which is as follows :

"22-I. Police Establishment Board at Commissionerate Level

(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 Commissionerate Level.

(2) The Police Establishment Board at Commissionerate Level shall consist of the following members, namely :-

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|-----|--|-----------------------|
| (a) | Commissioner of Police | ... Chairperson; |
| (b) | Two senior-most officers in the rank of Joint Commissioner or Additional Commissioner or Deputy Commissioner of Police | ... Member; |
| (c) | Deputy Commissioner of Police (Head Quarter) | ... Member-Secretary. |

Provided that, if none of the aforesaid members is from the Backward Class, then the State Government shall appoint an additional member of the rank of the Deputy Commissioner of Police belonging to such Class."

8. As such, the PEB at Commissionerate level shall be headed by Commissioner of Police as Chairperson and there has to be Notification of constitution of PEB in the Official Gazette with one Member from Backward Class. However, in the present matter, the perusal of minutes of PEB dated 29.11.2018 (Page Nos.118 to 122 of P.B.) reveals absence of Police Commissioner in the PEB. The perusal of minutes reveals that the PEB was headed by Joint Commissioner of Police and not by Commissioner of Police, as mandated under Section 22(I) of 'Act 2015' as reproduced above. This being the position, the constitution of PEB itself is illegal. The PEBs or CSBs are established in pursuance of directions of Hon'ble Supreme Court in **(2013) 15 SCC 732 (T.S.R. Subramanian and Ors. Vs. Union of India & Ors.)** to consider transfers, postings and other service related matters to bring transparency in administration and to ensure

normal tenure of the Police Personnel. It is in pursuance of directions by Hon'ble Supreme Court, the necessary amendments were made in 'Act 2015', which provides for establishment of PEB at different levels. This being the position, when law provides for the formation of PEB in a particular manner, then it has to be done in that manner only as a mandatory requirement of law and no latitude is given to the Respondents to temper with the constitution of PEB and to form PEB in the manner they choose. Suffice to say, the PEB was required to be headed by Commissioner of Police and none else. In the present case, admittedly, it is not headed by the Commissioner of Police. There is absolutely no explanation forthcoming in this behalf. Resultantly, it will have to be held that the constitution of PEB itself being illegal, the decision taken by such PEB have no sanctity in the eye of law and on that ground itself the impugned order is liable to be struck down.

9. Furthermore, no material is forthcoming to establish that the PEB has been notified in the Official Gazette and one of the Member was from the Backward Class. As per proviso to Section 22(I) of 'Act 2015', one of the Member shall be from Backward Class. The PEB shall consists of three members and if none of them belongs to Backward Class, then the State Government is obliged to appoint additional member of the rank of Deputy Commissioner of Police belonging to such Class. There is no compliance of this legislative intent in the present matter.

10. In so far as alleged misconduct, indiscipline or insubordination attributed to the Applicant is concerned, the perusal of PEB minutes reveals that the preliminary enquiry about the same was conducted and default report was received. So far as this aspect is concerned, it is not at all necessary to examine the veracity or correctness of the default report as a ground for transfer in view of finding recorded above that the constitution of PEB itself is illegal, which renders the impugned order unsustainable in law. As this ground goes to the

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root of the matter, I do not wish to go into the details of default report. Needless to mention that, in case of misconduct, the Department is always free to take appropriate departmental action and Respondent No.2 is free to do so.

11. The learned P.O. in Affidavit-in-reply referred to certain decisions of Hon'ble High Court, which are clearly distinguishable and are of no assistance to her in the present matter. Needless to mention that, every decision is the outcome of assessment of facts in totality *vis-à-vis* legal principles applicable to the facts. Therefore, even single additional fact or variance in the factual situation may make a lot of difference in the precedential value of a decision. It has said long ago that a case is a authority for what it actually decides and not what logically follows from it. This being the settled position of law, the present matter needs to be decided on the basis of facts emerging on record in the light of provisions of 'Maharashtra Police Act 2015'.

12. The learned P.O. sought to place reliance on the decision of Hon'ble High Court in ***Writ Petition No.1227/2016 (Sanjay Deshmukh Vs. State of Maharashtra) decided on 05.05.2016***, in ***Writ Petition No.6809/2017 (Vazeer Shaikh Vs. State of Maharashtra)*** and decision in ***O.A.No.1029/2017 (Dilip Kulkarni Vs. State of Maharashtra) decided by this Tribunal on 4th April, 2018***. In all these matters, there was valid and legal approval to the transfer by legally constituted competent PEB, and therefore, the transfers were approved by PEB invoking Section 22-N(2) of 'Act 2015'. However, in the present case, as concluded above, the constitution of PEB itself suffers from material illegality, and therefore, none of the Judgments is of any assistance to the Respondents.

13. In so far as the decision in ***Writ Petition No.7554/2013 (Pradeep Lonandkar Vs. State of Maharashtra) decided on 12.11.2013*** is concerned, it relates to transfer of Police Personnel by order of Commissioner of Police under the provisions of 'Maharashtra Government Servants Regulation of Transfers and

Prevention of Delay in Discharge of Official Duties Act, 2005' (hereinafter referred to as 'Transfer Act 2005') which is prior to the amendment in 'Act 2015'. After the amendments to 'Act 2015', the transfers are strictly governed by Section 22 of 'Act 2015', and therefore, the decision under 'Transfer Act 2005' is of no help to the Respondents in the present matter.

14. Undoubtedly, the transfer is an incidence of service and where it is made on administrative exigencies by following the provisions of law, it should not be interfered by the Tribunal. However, where the transfer is in defiance of express provisions of law, then it is liable to be quashed and set aside. In the present case, for the aforesaid discussion, I have no hesitation to sum-up that the transfer being in defiance of the provisions of law for want of duly constituted PEB, it needs to be quashed and set aside.

15. The necessary corollary of aforesaid discussion leads me to sum-up that the impugned order dated 29.11.2018 transferring the Applicant from Traffic Branch to Head Quarter, Pune is not sustainable in law and liable to be set aside. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned order dated 29.11.2018 is quashed and set aside.
- (C) The Applicant be reposted on the original post within two weeks from today.
- (D) No order as to costs.

Sd/-

^{VVV}
(A.P. KURHEKAR)
Member-J

Mumbai

Date : 12.04.2019

Dictation taken by :

S.K. Wamanse.

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