

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.1274 OF 2023

**DISTRICT: PUNE
SUBJECT: TRANSFER**

- 1) Shri Abhimanyu Suresh Mote,)
Age- 31 yrs, working as Police Constable,)
Office address Pashan Road, Chavan Nagar,)
Tal. Junnar, Dist. Pune) ... **Applicant**

Versus

- 1) State of Maharashtra)
Through Additional Chief Secretary,)
Home Department,)
Mantralaya, Mumbai- 400 032.)
- 2) Superintendent of Police)
Pune Rural, Chavannagar, Pashan Raod,)
Pune – 411008) ... **Respondents**

Smt. Punam Mahajan, learned Advocate for the Applicant.

Shri Ashok J. Chougule, learned Chief Presenting Officer for the Respondents.

CORAM : DEBASHISH CHAKRABARTY, MEMBER (A)

DATE : 18.12.2024.

J U D G M E N T

1. The Applicant who is 'Police Constable' in establishment of 'SP Pune Rural' has invoked provisions of 'Section 19' of 'The Administrative Tribunals Act 1985' to challenge his transfer from 'Junnar Police Station' to 'Police Headquarters' by 'Order' dated 07.07.2023 of 'SP Pune Rural'.

2. The learned Advocate for Applicant stated that Applicant was posted at 'Junnar Police Station' on 03.12.2018. However; just before completion of 'Normal Tenure' of 5 Year; he came to be suddenly transferred to 'Police Headquarters' by 'Order' dated 07.07.2023 of 'SP, Pune Rural'. The Applicant had thereupon joined at 'Police Headquarters' on 27.07.2023.

3. The learned Advocate for Applicant mentioned that Applicant was transferred from 'Junnar Police Station' to 'Police Headquarters' by 'Order' dated 07.07.2023 of 'SP Pune Rural' by invoking provisions of 'Section 22N(2)' of 'The Maharashtra Police Act 1951' purportedly on account of 'Administrative Exigencies' and in 'Public Interest'. However; 'Order' dated 07.07.2023 of 'SP, Pune Rural' was issued in contravention of provisions of 'Section 22N(2)' of 'The Maharashtra Police Act 1951' as there was no evidence about nature of 'Public Interest' or record of 'Administrative Exigencies'. The Applicant had already served with unblemished record for 4 Years and 7 Months at 'Junnar Police Station'.

4. The learned Advocate for Applicant emphasized that even if it were to be presumed without admitting that there indeed was something adverse against Applicant; yet Applicant had never been informed about it nor any explanation was ever sought from Applicant by 'Police Inspector' of 'Junnar Police Station' prior to issue of 'Order' dated 07.07.2023 of 'SP Pune Rural' by which Applicant came to be punitively transferred to 'Police Headquarters'. Hence; the unexpected transfer of Applicant to 'Police Headquarters' was an instance of "Malice in Law" since it was effected by 'SP Pune Rural' in lieu of punishment which could have always been imposed under 'Section 25' of 'The Maharashtra Police Act 1951' if there indeed was any serious misconduct on part of Applicant but after observing due procedure of 'Departmental Enquiry'. Thus; hurried transfer of Applicant from 'Junnar Police Station' to 'Police Headquarters' just before completion of 'Normal Tenure' of '5 Years' was case of 'Stigmatic Transfer'.

5. The learned Advocate for Applicant contended that there was no 'Application of Mind' by 'PEB'; as 'Minutes of Meeting' held on 06.07.2023 do not reflect any deliberation about alleged grounds cited in report submitted by 'Police Inspector' of 'Junnar Police Station' on 01.07.2023 to 'SP Pune, Rural'.

6. The learned Advocate for Applicant further contended that as per the 'DGP Circular' dated 07.10.2016; if any 'Police Personnel' was required to be transferred on grounds of misconduct or negligence; then there should be 'Preliminary Enquiry' by 'Superior Officer; wherein statement of concerned 'Police Personnel' must invariably be recorded in order to observe 'Principles of Natural Justice'. However; Applicant was not given any 'Personal Hearing' by 'Police Inspector' of 'Junnar Police Station' before proposal for his transfer out of 'Junnar Police Station' was submitted on 01.07.2023 to 'SP Pune Rural'.

7. The learned Advocate for Applicant lastly emphasized that as 'Order' dated 07.07.2023 of 'SP Pune Rural' to abruptly transfer Applicant from 'Junnar Police Station' to 'Police Headquarters' was arbitrary and malafide; it deserves to be quashed & set aside. Further; it was emphasized that though alleged grounds in report submitted by 'Police Inspector' of 'Junnar Police Station' on 01.07.2023 to 'SP Pune Rural' were never established beyond reasonable doubt; by observing 'Principles of Natural Justice' yet proposal to transfer Applicant came to be considered by 'PEB' and its recommendations were promptly accepted by 'SP Pune Rural'. Hence; Applicant should be transferred back to 'Junnar Police Station'.

8. The learned PO per contra relied on 'Affidavit-in-Reply' dated 22.12.2023 filed on behalf of 'SP Pune Rural' to state that Applicant was habitual in dereliction of duties and often adopted means which were unbecoming of 'Police Personnel'. The Applicant was directly involved in

activities of groupism and defied orders of seniors including 'Police Inspector' of 'Junnar Police Station'. So; also Applicant alongwith few 'Police Personnel' were sheltering those involved in 'Cow- Slaughter' and illegal transport of 'Cow Meat'. The nefarious activities of Applicant and few 'Police Personnel' could thus have even led to serious law and order situations in communally vulnerable areas under 'Junnar Police Station'.

9. The learned PO relied further on 'Affidavit-in-Reply' dated 22.12.2023 filed on behalf of 'SP Pune Rural' to emphasize that 'Order' dated 07.07.2023 of 'SP Pune Rural' to transfer Applicant from 'Junnar Police Station' to 'Police Headquarters' was free of vindictiveness as it has been issued in larger 'Public Interest'. The 'Order' dated 07.07.2023 of 'SP Pune Rural' was therefore completely justiciable under provisions of 'Section 22N(2)' of 'The Maharashtra Police Act, 1951'.

10. The learned PO relied again on 'Affidavit-in-Reply' dated 22.12.2023 filed on behalf of 'SP Pune Rural' to draw specific attention to provisions under 'Section 22(N)(1)(b)' of 'The Maharashtra Police Act, 1951' which provides 'Normal Tenure' of '5 years' at 'One Place of Posting' for 'Police Constables' but stressed that it was important to appreciate that there are reasonable restrictions placed on such entitlement under 'Proviso Clause' of 'Section 22(N)(1)' as well as 'Section 22(N)(2)' of 'The Maharashtra Police Act, 1951' which enables 'Competent Authority' to effect 'Mid Term Transfer' of any 'Police Personnel' as defined under 'Section 2(6B)' of 'The Maharashtra Transfer Act 1951'.

11. The 'Mid Term Transfer' of Applicant from 'Junnar Police Station' to 'Police Headquarters' by 'Order' dated 07.07.2023 of 'SP Pune Rural' was effected when he was just short of completing 'Normal Tenure' of 5 Years at 'One Place of Posting' under provision of 'Section 22N(1)(b)' of 'The Maharashtra Police Act 1951'. The 'PEB' had decided to recommend 'Mid Term Transfer' of Applicant & few 'Police Personnel' from 'Junnar

Police Station' to 'Police Headquarters' primarily based on report submitted to 'SP Pune Rural' by 'Police Inspector' of 'Junnar Police Station' on 01.07.2023 which specifically mentions that Applicant had even worked on the sly for 'A.T.S'. However; this was vehemently contended by Applicant emphasizing that he had never worked covertly for 'A.T.S'.

12. The 'Mid Term Transfer' of Applicant from 'Junnar Police Station' to 'Police Headquarters' was ostensibly due to his alleged participation in activities to foster groupism amongst 'Police Personnel' serving at Junnar Police Station' and conniving with those who were involved in 'Cow-Slaughter' and transport of 'Cow Meat'. Further; the report submitted to 'SP Pune Rural' by 'Police Inspector' of 'Junnar Police Station' on 01.07.2023 also mentions about apprehension that continuation of Applicant & few 'Police Personnel' at 'Junnar Police Station' could result in serious 'Law and Order' situations arising in communally vulnerable areas under 'Junnar Police Station'. Besides; it was also particularly mentioned in the report of 'Police Inspector' of 'Junnar Police Station' dated 01.07.2023 submitted to 'SP Pune Rural'; that Applicant was indulging in some acts of insubordination of seniors serving at 'Junnar Police Station'.

13. The 'SP Pune Rural' as head of 'PEB' during its meeting held on 06.07.2023 primarily relied on the report submitted by 'Police Inspector' of 'Junnar Police Station' on 01.07.2023. So, against this backdrop it becomes pertinent to examine the truthfulness of its contents by comparing its contents with reply given by 'Police Inspector' of 'Junnar Police Station' under 'RTI Act: 2005' to Applicant on 24.07.2024 which was just few weeks after submission of his report on 01.07.2023 about serious misconduct of Applicant to 'SP Pune Rural'. The following cryptic information came to be disclosed on 24.07.2023 to Applicant under 'RTI Act: 2005' by 'Police Inspector' of 'Junnar Police Station'.

आपण मागणी केलेली माहिती	या कार्यालयाकडून देण्यात येत असलेली माहिती
<p>दिनांक ०३.१२.२०१८ ते आज दिनांक १३.०७.२०२३ रोजी पर्यंत मी जुन्नर पोलीस स्टेशनला नेमणुकीस आहे. नमुद कालावधीत मी ड्युटीवर असताना ड्युटी नाकारणे, गटबाजी करणे, वरिष्ठांशी उदधटपणे वागणे, आरोगंटपणे वागणे तसेच पोलीस खात्यासंदर्भात अशोभणीय कृत्य केले असल्यास त्याबाबत मा.पो. नि.सो. यांनी माझे विषयी घेतलेल्या स्टेशन डायरी नोंदी, मेमो विचारलेले कसुरी खुलासे त्या संदर्भात आम्ही दिलेले लेखी उत्तरे या सर्व कागदपत्रांची छायांकित प्रत मिळणेस विनंती आहे.</p>	<p>केंद्रीय माहिती अधिकार अधिनियम २००५ अन्वये अर्जदार आपण मागणी केलेली माहितीबाबत सदर कालावधीतील जुन्नर पोलीस स्टेशनचा उपलब्ध अभिलेख पडताळून पाहिला असता आपली माहिती निरंक आहे.</p>

14. The 'Police Inspector' of 'Junnar Police Station' thus not only did not disclose any specific instances of serious misconduct of Applicant which had occurred at 'Junnar Police Station' during substantial period of time from 03.12.2018 up to 13.07.2023 when Applicant had served there; but importantly nothing about allegations of involvement of Applicant & few 'Police Personnel' in activities to foster groupism amongst 'Police Personnel' serving at 'Junnar Police Station' and sheltering those involved in 'Cow Slaughter' and transport of 'Cow Meat'; when these had been chiefly relied upon to recommend 'Mid Term Transfer' of Applicant by report submitted on 01.07.2023 to 'SP Pune Rural'.

15. The 'Police Inspector' of 'Junnar Police Station' when discharging 'Statutory Role' of 'S.P.I.O' under 'RTI Act 2005' displayed cavalier attitude which is rather intriguing; as it completely undermines the sanctity and veracity of his report submitted on 01.07.2023 to 'SP Pune Rural' about serious misconduct of Applicant.

16. The 'Police Inspector' of 'Junnar Police Station' as incharge of group of disciplined 'Men in Uniform' could not have in such guileful manner absolved himself from providing 'Information' or 'Documents'

which had been sought by Applicant under 'RTI Act: 2005'; when these had been primarily relied upon while compiling the report submitted on 01.07.2023 to 'SP Pune Rural' about serious misconduct of Applicant.

17. The 'SP Pune Rural' was expected to diligently examine grave contents of the report submitted by 'Police Inspector' of 'Junnar Police Station' on 01.07.2024. The 'PEB' under 'SP Rural Pune' also starkly had failed to ascertain and record in 'Minutes of Meeting' of 06.07.2023 particulars of definitive actions which had been taken by 'Police Inspector' of 'Junnar Police Station' to enforce provisions of law captioned as "Prohibition of Slaughter of Cows" under 'Section 5' of 'Maharashtra Animal Preservation Act 1976'.

18. The 'SP Pune Rural' being bound to observe 'Sur-Generis' provisions of 'Section 22K' of 'The Maharashtra Police Act 1951' was undoubtedly expected to "Separate the Wheat from the Chaff" about these issues of deep concern for any 'Police Administration'; before taking decision to effect immediate transfers of Applicant & few other 'Police Constables' who are placed at the 'Bottom of Pyramid'.

19. The 'SP Pune Rural' by passing 'Order' dated 07.07.2023 to transfer Applicant & few 'Police Personnel' from 'Junnar Police Station' to 'Police Headquarters' acted in undue haste possibly under misplaced belief that doing so would help put to rest local matters of disturbing nature; which infact had flourished only due to failure of leadership on part of 'Police Inspector' of 'Junnar Police Station'. On other hand; it was imperative for 'SP Pune Rural' to conduct an in-depth enquiry into grim allegations that Applicant and few 'Police Personnel' were fostering groupism in 'Junnar Police Station' and displayed temerity to be directly involved with those carrying out 'Cow Slaughter' and transport of 'Cow Meat'. The lament is that no efforts were made to conclusively establish that these were directly attributable only to Applicants & few 'Police

Personnel' and not to any others including 'Police Inspector' of 'Junnar Police Station'.

20. The transfer of Applicant from 'Junnar Police Station' to 'Police Headquarters' by 'Order' dated 07.07.2023 of 'SP Pune Rural' thus displays certain hues of it being an instance of 'Stigmatic Transfer'. The case of 'Stigmatic Transfer' has to be distinguished from those of general 'Mid Term Transfer' under 'Section 2(6B)' as the one where 'Competent Authority' under 'Explanation' to 'Section 22 N(2)' of 'The Maharashtra Police Act 1951' has chosen to transfer the 'Police Personnel' concerned in lieu of proceeding against him for serious misconduct and then imposing proportionate penalty if found guilty after conduct of 'Departmental Enquiry'. The **Hon'ble Supreme Court of India in Governing Body, St. Anthony's College V. Rev. Fr. Paul Petta, 1988 (4) CLR 486 (SC)** has pertinently observed that such 'Stigmatic Transfers' are those which by its own operation amounted to punishment for the 'Government Servant'; which could only have been awarded after complying with 'Principles of Natural Justice'.

21. The 'SP Pune' Rural against the above elaborated background is thus directed to undertake review of earlier decision to transfer Applicant based only on the report submitted by 'Police Inspector' of 'Junnar Police Station' on 01.07.2023. The truth behind occurrence of disquieting & vexing incidents as mentioned in the report of 'Police Inspector' of 'Junnar Police Station' dated 01.07.2023 which are ascribed only to Applicant & few 'Police Personnel' must be discovered for cause of equity & impartiality; by assigning re-enquiry about these to any senior officer including 'Dy SP (HQ)' serving directly under 'SP, Pune Rural' who also happens to be 'Member Secretary' of 'PEB'. The Applicant in particular must be given 'Personal Hearing' during course of such re-enquiry in observance of 'Principles of Natural Justice'. The report of re-inquiry conducted by 'Dy SP (HQ)' or other designated officer should be submitted within 'Four Weeks' to 'SP, Pune Rural'.

22. The 'SP Pune Rural' thereafter to consider afresh the findings of re-enquiry done by 'Dy SP (HQ) or other designated officer with an 'Open Mind' and take appropriate decision about grievance of Applicant that he was abruptly transferred to 'Police Headquarters' based only on vague allegations made due to prejudicial attitude of 'Police Inspector' of 'Junnar Police Station'. In eventuality of earlier decision to transfer Applicant to 'Police Headquarters' by 'Order' dated 01.07.2023 of 'SP Pune Rural' is affirmed upon re-enquiry to have been passed without any element of prejudice or bias against Applicant by solely relying upon objective appreciation of peculiar facts and circumstances prevailing at that time in 'Junnar Police Station'; then Applicant shall have no option but to continue to serve at 'Police Headquarters'. However if this is not; then Applicant should be transferred within 'Four Weeks' to any 'Police Station' other than 'Junnar Police Station' but from amongst '3 Options' to be sought from him; so as to remove the stain left behind on the large canvas of various decisions taken by 'PEB' headed by 'SP Pune Rural'. The transfer of Applicant from 'Junnar Police Station' to 'Police Headquarters' although an 'Implied Condition of Service' yet it cannot be allowed to be perceived in future to be an instance of 'Stigmatic Transfer'; which was not remedied at all but instead permitted to find quiet recognition in annals of otherwise laudable 'Police Administration' under 'SP Pune Rural'.

ORDER

1. The O.A. No. 1274/2023 is Partly Allowed.
2. No Order as to Costs.

Sd/-
(Debashish Chakrabarty)
Member (A)

Place: Mumbai
Date:
Dictation taken by: A.G. Rajeshirke.
Uploaded on: _____