

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.369 OF 2019

DISTRICT : SANGLI

Shri Hemant H. Dabade.)
Working as Assistant Sub-Inspector, attached)
to Traffic Branch, Sangli and residing at Miraj,)
District : Sangli.)...Applicant

Versus

1. The Superintendent of Police.)
Sangli.)
2. The Assistant Police Inspector.)
Traffic Control Branch, Sangli.)...Respondents

Mr. A.V. Bandiwadkar, Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 17.05.2019

JUDGMENT

1. In the present Original Application, the challenge is to the transfer order dated 16.05.2018 as well as relieving order dated 01.04.2019 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 :-

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The Applicant was appointed as Police Constable on 01.11.1980. Later, during the course of service, he was promoted to the post of Assistant Sub-Inspector. At the time of transfer, he was working as Assistant Sub-Inspector, Traffic Branch, Sangli. In general transfer of 2018, by order dated 16th May, 2018, he was transferred to Kavathe Mahankal Police Station having completed normal tenure. On 17.05.2018, he made representation for retention on the ground of health as well as on the ground that he is due to retire from service on 31.10.2019. He, therefore, requested for retention at Sangli. After submitting the representation since no order was communicated to him, he was under impression that he will be allowed to continue at Sangli. As such, despite transfer order dated 16.05.2018, he was allowed to continue at Sangli till the issuance of impugned order dated 01.04.2019. Abruptly, the Respondent No.1 – Superintendent of Police by order dated 01.04.2019 issued direction to relieve him in terms of his transfer order dated 16.05.2018 and directed him to join at Kavathe Mahankal Police Station. Being aggrieved by belated relieving order, the Applicant has approached this Tribunal by filing the present O.A. He contends that the issuance of such belated relieving order after about 11 months from transfer order, has practical effect of mid-term transfer, and therefore, it is not sustainable in law for want of compliance of Section 22-N(2) of Maharashtra Police Act, 1951' (hereinafter referred to as 'Maharashtra Police Act 1951'). He further contends that he had made representation for retention on medical ground but the same was not considered though extension has been granted to so many Police Personnel and he has been subjected to discrimination. He further contends that now, he is due for retire after five months' service, and therefore, he should not have been abruptly relieved, which has practical effect of mid-term transfer. He, therefore, prayed to set aside the impugned orders dated 16.05.2018 and 01.04.2019.

3. The Respondents resisted the application by filing Affidavit-in-reply (Page Nos.26 to 37 of Paper Book) *inter-alia* denying the entitlement of the Applicant to

the relief claimed. It is not in dispute that the Applicant by order dated 16.05.2018 has been transferred from Sangli to Kavathe Mahankal Police Station. It is also not in dispute that he had made representation for retention and continued at Sangli till issuance of relieving order dated 01.04.2019. The Respondents denied that the Applicant has been subjected to discrimination. The Respondents contend that the Applicant had completed five years and two months' service at Sangli, Traffic Branch and was due for transfer in general transfer 2018. The general transfers were approved by Police Establishment Board (PEB) at District level, as contemplated under Section 22-N(1) of 'Maharashtra Police Act 1951' and he was transferred to Kavathe Mahankal Police Station on administrative ground, but was not relieved immediately. Later, on the request of P.I, Kavathe Mahakal Police Station, he was relieved by order dated 01.04.2018 on the background of general elections of 2019. As such, considering the requirement of P.I, Kavathe Mahakal Police Station, the Applicant was relieved by order dated 01.04.2019. The Respondents denied that the relieving order dated 01.04.2019 amounts to mid-term transfer. The Respondents further denied that there is any requirement of approval of PEB for relieving the Applicant later. Thus, the Respondents sought to justify the relieving order and prayed to dismiss the O.A.

4. The Applicant has also filed additional Affidavit (Page Nos.46 to 49 of P.B.) alleging that general transfer order dated 16.05.2018 has not been given effect fully, as 22 Police Personnel though transferred at different places have not been relieved and continued at the same place. He, further, alleged that in respect of five Police Personnel, their transfer orders have been modified subsequent to general transfers. The Applicant, therefore, contends that the similar treatment is not given to him and he has been subjected to discrimination, that too, at the verge of retirement.

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5. Shri A.V. Bandiwadekar, learned Advocate for the Applicant assailed the impugned relieving order dated 01.04.2019 on the ground that it has effect of mid-tenure transfer and for such mid-tenure transfer, and there being admittedly no compliance of Section 22-N(2) of 'Maharashtra Police Act 1951', the impugned order is unsustainable in law. He further urged that, now only five months' period is left for retirement, and therefore, he should have been protected in view of Government policy that the employee who is left with service of less than one year should not be transferred. He has further pointed out that the Applicant has been subjected to discrimination by refusing him extension on health ground. On this line of submission, he urged that the impugned order is arbitrary and unsustainable in law and facts.

6. Per contra, Smt. K.S. Gaikwad, learned P.O. submitted that the Applicant was already transferred in general transfer of 2018 with the approval of PEB, but he was relieved late on the requisition from Kavathe Mahankal Police Station. She contends that there is no requirement of PEB at the time of relieving the Applicant by order dated 01.04.2019. As regard discrimination, she fairly concede that some of the Police Personnel have been granted extension of one year and further concede that, some of the Police Personnel though transferred are not relieved till date. However, she sought to cover-up stating that they might have been relieved for administrative exigencies.

7. At the very outset, it must be stated that, admittedly, at the time of general transfer, the Applicant was due for transfer and transfers were approved by PEB at District level. Accordingly, 185 Police Personnel were transferred inter-district. It is also an admitted position that the Applicant made representation on 17.05.2018 for retention on health ground. He requested for retention at Sangli as he is due for retirement on 31.10.2019. The Applicant has also produced Medical Certificate, which shows that he is suffering from uncontrolled Hypertension with angina, as seen from Medical Certificate dated 03.04.2019 (at Page

No.24 of P.B.). He has also produced another Medical Certificate dated 03.04.2019 (Page No.23 of P.B.), which shows that he is suffering from Fatty liver with Melanesia Coli and needs regular treatment. Admittedly, though he was transferred by order dated 16.05.2018, he was continued at Sangli till relieving order dated 01.04.2019.

8. Normally, once the transfer orders are issued, it should be followed by relieving order within reasonable time. One can understand some reasonable time for issuance of relieving order or administrative exigencies. In case of extreme administrative exigency, the employee can be relieved later on. However, in the present case, there is inordinate delay of 11 months in relieving the Applicant. Though relieving order cannot be termed as mid-term transfer, in the present situation, it having been passed after 11 months mid-way, it has effect of displacement of the Applicant mid-term. Strictly speaking, it cannot be termed as mid-tenure transfer, and therefore, does not require compliance of Section 22-N(2) of 'Maharashtra Police Act 1951', which *inter-alia* provides that the competent authority is empowered to transfer Police Personnel on administrative exigency mid-term. But it should not be forgotten that in the present case, the relieving order has been issued after 11 months from transfer order, which has effect of displacement and inconvenience to the Applicant. The very object of issuance of transfer order in May every year is to avoid hardship and convenience of the employee. If the relieving orders are passed in such an arbitrary manner, then the very purpose of 'Maharashtra Police Act 1951' would be defeated. The Respondents have not explained for inordinate delay of 11 months in relieving the Applicant. Be that as it may, now the question comes whether in the light of other attending circumstances, the Applicant is entitled to the relief claimed.

9. As stated above, though the Applicant has requested for retention on health ground, it was not considered, but at the same time, the extension was

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granted to 20 Police Personnel. The perusal of transfer order dated 16.05.2018 reveals that the extension of one year was granted to 20 Police Personnel. The reasons for extension to these Police Constables is not forthcoming, except in case of one Police Personnel viz. Supriya A. Shaikh, the extension is shown granted on medical ground. Whereas, in respect of remaining 19 Police Personnel, no reason for extension is mentioned or forthcoming. No explanation in this behalf is forthcoming though it was open to the Respondents to explain the situation by filing additional Affidavit. However, the Respondents chose to remain silent which necessarily gives rise to inference that the extension was granted in the manner which cannot be justified in the Tribunal. Therefore, the contention of the Applicant that he is subjected to discrimination cannot be brushed aside.

10. Furthermore, by filing Additional Affidavit, the Applicant has specifically raised the issue of hostile discrimination meted out to him contending that 22 Police Personnel (who are at Serial Nos.60, 68, 69, 72, 80, 88, 103, 104, 116, 118, 127, 13, 7, 138, 142, 246, 151, 153, 157, 172, 176 and 181) though transferred to different places, they have not been relieved till date. When the attention of P.O. was drawn to this fact, on instruction, she fairly stated that, out of these 22 Police Personnel, 3 Police Personnel are recently relieved, but remaining are still retained and not relieved though they were transferred by general transfer order dated 16.05.2018.

11. Not only that, the Affidavit of the Applicant further shows that the transfer orders of candidates at Serial Nos.1, 10, 29, 66 and 92 have been modified after issuance of general transfer order and they are accommodated as per their choice. There is no rebuttal to this specific averment made by the Applicant.

12. In view of above, it is clearly visible that the Applicant has been subjected to hostile discrimination, which is not permissible in law being hit of Articles 14 and 16 of Constitution of India.

13. Apart, now in view of relieving order dated 01.04.2019, the Applicant has left only with five months' service at Kavathe Mahankal Police Station. He is due to retire on 31.10.2019. True, at the time of general transfer dated 16.05.2018, he had left with more than one year's service. However, he was allowed to continue at Sangli and now only five months' service is left before retirement. This aspect also needs to be considered while examining the entitlement of the Applicant to the relief claimed.

14. Shri Bandiwadekar, learned Advocate for the Applicant has pointed out that, as per the provisions of 'Maharashtra Government Servants Regulation of Transfer and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as 'Transfer Act 2005'), protection is available to the Government servant from transfer who has less than one year for retirement. True, in the present case, the transfers are governed by 'Maharashtra Police Act 1995' and not by 'Transfer Act 2005'. However, there are general Circulars and instructions of the Government about protection to the employee from transfer, who has less than one year for retirement. In this behalf, a reference may be made to Circular dated 19.04.2018.

15. The learned Advocate for the Applicant in this behalf placed reliance on the Judgment of Hon'ble Bombay High Court in **Writ Petition No.11464/2014 (Anil P. Dalvi Vs. State of Maharashtra)**. It was a case of transfer arising from the 'Transfer Act 2005', where extension to the Government servant was refused. He was transferred by order dated 31st May, 2014. He was due to retire in September, 2015. The O.A. filed by the Applicant challenging transfer was

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rejected on the ground that he had completed normal tenure and the period of more than one year was left for retirement at the time of transfer. Being aggrieved by the decision of this Tribunal, he had filed Writ Petition No.11464/2014, which has been allowed by Hon'ble High Court on 23rd March, 2015. The Hon'ble High Court quashed and set aside the transfer order dated 31.05.2014 on the ground that he had left less than one year for retirement at the time of passing the Judgment. Para No.3 of the Judgment is as follows :-

"3. The fact that the petitioner is retiring in the month of September 2015 is relevant and required to be considered in favour of the petitioner. The provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 and the related circular, provide protection against the order of transfer where the employee who is due for transfer after completion of tenure at a station of posting or post has less than one year for retirement. Therefore, in the interest of justice and as the protection is now available to the petitioner, he needs to be excluded from being transferred."

16. Turning to the facts of the present case, now the Applicant has left with five months' service before retirement. Therefore, in my considered opinion, in the light of above Judgment, he is entitled to protection from transfer in this changed scenario because of delayed relieving order.

17. As such, the material placed on record clearly spells that the Applicant has been subjected to discrimination. Though the Respondent No.1 granted extension to 20 Police Personnel, he did not give similar treatment to the Applicant though he had applied for extension on health ground supported with Medical Certificates. Apart, 22 Police Personnel were transferred but retained at the same place except 3, who are relieved recently. Besides, the transfer orders of 5 Police Personnel were modified and postings were given to them to their satisfaction. However, the same treatment was not given to the Applicant though he is similarly situated person. Needless to mention that, in service jurisprudence, where the relief is granted to a particular set of employees, some

dispensation needs to be given, who are similarly situated and not doing so, it would amount to discrimination and violative of Article 14 of the Constitution of India. The executive cannot be allowed to act arbitrarily and similar treatment needs to be given to the persons who are similarly situated. Therefore, the impugned order dated 01.04.2019 as well as transfer order dated 16.05.2018 deserves to be quashed to meet the ends of justice.

18. The totality of aforesaid discussion leads me to sum-up that the Applicant is entitled to the relief claimed and the O.A. deserves to be allowed. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned relieving order dated 01.04.2019 is quashed and set aside. Consequently, the transfer order dated 16.05.2018 qua the Applicant is also quashed and set aside.
- (C) The Applicant be reposted on the post he was transferred from within two weeks from today.
- (D) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 17.05.2019

Dictation taken by :

S.K. Wamanse.

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