

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.696 OF 2019

DISTRICT : MUMBAI

Shri Kishor Babanrao Jagtap.)
Age : 55 Yrs., Working as Police Inspector)
attached to Control Room Palghar and)
Residing at 1/32, Police Officers Quarters,)
Carter Road, Bandra (E), Mumbai 400 050.)...**Applicant**

Versus

1. The Superintendent of Police.)
Palghar, Having office at Central)
Administrative Building, CIDCO)
Road, Palghar (W).)
2. Shri Janardan S. Parabkar.)
Aged : Adult, Working as Incharge)
Police Inspector, Boisar Police)
Station, District : Palghar.)
3. The State of Maharashtra.)
Through Addl. Chief Secretary,)
Home Department, Mantralaya,)
Mumbai - 400 032.)...**Respondents**

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

Mrs. K.S. Gaikwad, Presenting Officer for Respondents 1 & 2.

None for Respondent No.3.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 15.10.2019

W. S. Kulkarni

JUDGMENT

1. The Applicant has challenged the order dated 28.02.2019 whereby the Respondent No.1 temporarily posted him as Police Inspector, Control Room, Palghar 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 follows:-

The Applicant is serving in the cadre of Police Inspector. At the time of impugned order dated 28.09.2019, he was serving as Police Inspector, Boisar Police Station, District Palghar. He had not completed normal tenure of two years at Boisar. By order dated 28.12.2019, the Respondent No.1 temporarily posted him at Control Room, Palghar invoking powers under Section 22N(2) of Maharashtra Police Act, 1951. As per the impugned order, he was temporarily deputed at Boisar Police Station till further order. Having found that the Respondent No.1 did not take any further steps to repost him at Boisar, the Applicant has challenged the impugned order contending that such temporary deputation without specifying period is unsustainable in law and continuing such temporary deputation would amount to mid-term and mid-tenure transfer in violation of provisions of Maharashtra Police Act, 1951. He further contends that in view of stand taken by Respondent No.1 that he was temporarily posted at Control Room, Palghar in view of alleged default report, the impugned action is punitive and not sustainable in law. With this pleading, the Applicant prayed to set aside the impugned order dated 28.02.2019 and sought direction to repost him at Boisar Police Station.

3. The Respondent No.1 resisted the application by filing Affidavit-in-reply inter-alia denying that the impugned order suffers from any

illegality. The Respondents sought to justify the impugned action contending that while Applicant was serving at Boisar Police Station, the SDPO, Boisar had submitted default report against him thereby recommending his transfer from Boisar Police Station. Accordingly, the matter was placed before Police Establishment Board (PEB) duly constituted in terms of Section 22J-1. The PEB considered the default report and unanimously resolved to depute the Applicant temporarily at Control Room, Palghar in view of default report as well as having regard to the ensuing Parliamentary Elections May 2019. It was further noticed that the continuation of the Applicant at Boisar Police Station would not be conducive from the point of administration and law and order problem. Accordingly, the PEB decided to depute him at Control Room, Palghar temporarily. In pursuance of the decision, the Respondent No.1 – Superintendent of Police passed order dated 28.02.2019. The Respondent No.1 thus sought to justify the impugned order and prayed to dismiss the O.A.

4. When the matter was taken up for admission having noticed that the Applicant was temporarily deputed but continued for more than six months, the learned P.O. was directed to take instructions from Respondent No.1 to know whether Respondent No.1 at his own would like to pass further order of reposting of the Applicant. However, the learned P.O. has filed reply justifying impugned order on the ground of default. As such, though no opportunity was given to pass further appropriate order or to issue necessary Corrigendum so as to treat it as regular transfer, no further steps were taken. On this background, the Tribunal is required to decide the O.A.

5. Heard Shri A.V. Bandiwadkar, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

See memo

6. At the very outset, let us see the impugned order which is as follows :-

“आदेश :-

महाराष्ट्र पोलीस अधिनियम, १९५१ मधील कलम २२ जे (१)(२) अन्वये प्राप्त अधिकाराचा वापर करून व महाराष्ट्र पोलीस अधिनियम, १९५१ मधील कलम २२ न मधील पोटकलम (२) मधील सुधारीत स्पष्टीकरणानुसार जिल्हास्तरीय पोलीस आस्थापना मंडळ यांनी मान्यता दिल्याप्रमाणे पोलीस निरीक्षक किशोर बबनराव जगताप, नेम. बोईसर पोलीस ठाणे यांना अपवादात्मक प्रकरणांमध्ये जनहितार्थ आणि प्रशासनिक निकडीनुसार पुढील आदेश होईपर्यंत नियंत्रण कक्ष, पालघर येथे निव्वळ तात्पुरता स्वरूपात तैनात करण्यात येत आहे.

वर नमूद पोलीस निरीक्षक यांनी त्यांचे निव्वळ तात्पुरत्या तैनातीचे ठिकाणी तात्काळ हजर होवून हजर झाले बाबतचे दिनांकासह पुर्तता अहवाल इकडील कार्यालयास विनाविलंब सादर करावा.

सही/-
(गौरव सिंग)
पोलीस अधीक्षक, पालघर.”

As such, though the Respondent No.1 invoked the provisions of Section 22N(2) by placing the matter before PEB, he in his wisdom thought it appropriate to depute the Applicant temporarily at Control Room, Palghar instead of regular transfer to Police Control Room, Palghar. As such, it is explicit and admitted position that the order dated 28.02.2019 is temporary deputation order and not regular transfer order. This aspect is of vital importance to be borne in mind while deciding the present O.A.

7. Needless to mention that the parameters and considerations for deciding the legality of transfer order substantially differs from the considerations or parameters while deciding temporary deployment order. In the present case, though the Respondent No.1 invoked the provisions of Section 22N(2) of Maharashtra Police Act, he passed order of temporary deployment and not regular transfer. This being the position, the legality of the impugned order will have to be judged from the connotation of order of temporary deployment and not regular transfer.

8. In case of temporary deployment, normally, the order should specify the period of temporary deployment and where no such

specific period is stipulated in the order, then such temporary deployment should come to an end within reasonable period. However, in the present case, no such fixed period is mentioned in impugned order and secondly, though the period of more than seven months is over, till date, no further steps are taken by Respondent No.1 to repost the Applicant on his original post at Boisar Police Station. The Applicant though made representation on 01.06.2019 for issuance of reposting order, the Respondent No.1 did not respond it, neither issued any Corrigendum Order, so as to treat the impugned order dated 28.02.2019 as regular transfer.

9. Shri A.V. Bandiwadkar, learned Advocate for the Applicant sought to assail the impugned order as if it is regular transfer order contending that the constitution of PEB was incorrect for the reason that the SDPO Shri Walvi who has submitted default report should not have been the Member of PEB and alleged lapses attributed to the Applicant in default report are unsustainable to transfer the Applicant. By filing Rejoinder, the Applicant tried to explain about default report. In so far as all these aspects are concerned, as stated above, these submissions were advanced to assail the impugned order as if it is transfer order. Indeed, it is not regular transfer order but temporary deployment order. Therefore, I do not think it appropriate to go into the details of the constitution of PEB as well as veracity of default report as the present O.A. deserves to be decided to the extent of legality of temporary deployment order. The issue of constitution of PEB as well as veracity of default report are kept upon if occasion arises. Presently, I am restricting the discussion only on the point of legality of temporary deployment order.

10. Needless to mention that the Respondent No.1 – Superintendent of Police have jurisdiction to depute the Police Personnel temporarily at another post, if circumstances warrants so. In the present case, the PEB in its minutes had categorically observed that the

See 11/11/19

continuation of the Applicant at Boisar Police Station may not be conducive from the point of administration as well as law and order problem. In Paras 6 & 7, the PEB held as follows :-

“६. तसेच बोईसर पोलीस ठाणे हद्दीतील लोकप्रतीनिधी व विविध पक्षाचे पदाधिकारी, नेते मंडळी यांनी देखील प्रभारी अधिकारी श्री. किशोर जगताप हे अपमानास्पद वागणूक देतात. ते पोलीस ठाण्यात आल्यावर त्यांच्या तक्रारी बाबत कानाडोळा करतात. सर्व पक्षाच्या पदाधिका-यांना संशयाच्या दृष्टीने पाहतात. पोलीस व जनता यांचेतील संबंध सौहार्दपूर्ण होण्याच्या दृष्टीने सर्व स्तरातून प्रयत्न होत असतांना त्यांची हि विकृती अत्यंत घातक आहे. पोनि / किशोर जगताप प्रभारी अधिकारी बोईसर पोलीस ठाणे यांचे कामकाज करण्याची पध्दत ही हेकेखोर व मनमानी स्वरूपाची आहे. ती पोलीस खात्याचे शिस्तीस धरून नाही असे त्यांचे वर्तनावरून स्पष्ट होते.

७. तसेच आगामी काळात लोकसभा निवडणूकीचे अनुषंगाने सर्वसामान्य जनतेचा पोलीसबाबत विश्वास संपादन करून जातीय तसेच सामाजीक सलोखा निर्माण करणे आवश्यक असतांना तसेच आपलेकडील पोलीस अधिकारी/ कर्मचारी यांना सोबत घेऊन सांघीक भावनेने व कर्तव्यनिष्ठेने काम करणे आवश्यक असतांना तसेच आपल्याकडील पोलीस अधिकारी / कर्मचारी यांना सोबत घेऊन सांघीक भावनेने व कर्तव्यनिष्ठेने काम करणे आवश्यक आहे. त्यांच्या या कृतीमुळे पोलीस ठाणे हद्दीत कायदा व सुव्यवस्था बिघडण्याची तसेच त्यामुळे मोठ्या अडचणी निर्माण होण्याची शक्यता नाकारता येत नाही. त्यामुळे त्यांची बोईसर पोलीस ठाणे येथून सदर गैरवर्तनाचे कारणास्तव इतरत्र बदली होणेकरीता प्राप्त अहवाल आस्थापना मंडळासमोर ठेवण्यात आला. सदर अहवाल व दरतऐवजांचे साकल्याने अवलोकन करता, पोनि / किशोर जगताप यांच्या या कृतीमुळे बोईसर पोलीस ठाण्याचे हद्दीत कायदा व सुव्यवस्था बिघडण्याची तसेच त्यामुळे मोठ्या अडचणी निर्माण होण्याची शक्यता असल्याचे प्रथमदर्शनी दिसून आले आहे. अशा परिस्थितीत पोनि / किशोर जगताप यांना जनतेशी थेट संबंध येना-या बोईसर पोलीस ठाणे येथे कर्तव्यार्थ ठेवणे जनहीतार्थ व प्रशासनिक दृष्टीने उचीत नसल्याने, महाराष्ट्र पोलीस अधिनियम, १९५१ मधील कलम २२ न व त्याखालील सुधारीत स्पष्टीकरणानुसार अपवादात्मक प्रकरणी जनहीतार्थ तसेच प्रशासनिक निकडीनुसार त्यांची पालघर जिल्ह्यांतर्गत बोईसर पोलीस ठाणे ते नियंत्रण कक्ष, पालघर येथे निव्वळ तात्पुरत्या स्वरूपात तैनात करण्याबाबत निर्णय घेण्यात आला.”

11. As such, in fact situation, the PEB thought it appropriate to temporary deploy the Applicant at Control Room, Palghar till further orders. Whether reasons which weighed with the authority for arriving at subjective satisfaction would qualify it as a fit case for temporary deployment of the Police Personnel would depend upon the facts of each case and there may be diverse consideration on the basis of which such decision was taken. The Tribunal cannot substitute its opinion for that of authority particularly when it is a case of temporary deployment. I, therefore, see no illegality in the impugned order of temporary deployment and the challenge to the same is without merit.

12. However, it is necessary to note that temporary deployment should be for stipulated reasonable period. In the present case, ensuing Parliamentary Elections of May 2019 was one of the reason for temporary deployment of the Applicant at Control Room, Palghar.

The Elections are over long ago. Now, the State Legislative Assembly Elections are underway and will be over by the end of this month. The Applicant has already completed more than seven months on temporary deployment posting at Control Room, Palghar. If such period of temporary deployment is continued for a longer period, it may amount to transfer the Applicant under the guise of temporary deployment period, which is not permissible. This being the position, it would be appropriate that the period of temporary deployment should be terminated by issuing appropriate order by Respondent No.1 within reasonable time.

13. The present O.A. is, therefore, needs to be disposed of with suitable direction. The Applicant is required to be reposted on his original post. After his reposting, the Respondent No.1 may pass appropriate transfer order, if choose to do so, in accordance to law. However, it should not be construed that the Tribunal has passed any such order for transfer and it is left to the Respondents. Hence, the following order.

ORDER

- (A) The Original Application is allowed partly.
- (B) The Respondent No.1 is directed to repost the Applicant within a month from today and thereafter he may pass further appropriate transfer order, if warranted and deems fit in accordance to law.
- (C) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai
Date : 15.10.2019
Dictation taken by :
S.K. Wamanse.

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