

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI**

**ORIGINAL APPLICATION NO.936 OF 2017**

**DISTRICT : PALGHAR**

Shri Mahesh Yashwantgiri Gosavi, )  
Working as Assistant Sub-Inspector, )  
Residing at A-103, Prathamesh Society, )  
Mulgaon, Near Salmadevi Mandir, )  
Vasai (W), District Palghar – 401 201. )... Applicant

**Versus**

1. State of Maharashtra, )  
Through Chief Secretary, )  
Mantralaya, Mumbai 400 002. )
2. The Additional Chief Secretary, )  
Home Department, Mantralaya, )  
Mumbai 400 032 )
3. The Superintendent of Police, )  
Palghar District. )  
New Admn. Building, Bidako Road, )  
Palghar, Maharashtra 401 404. )... Respondents

**Smt. Punam Mahajan, learned Advocate for the Applicant.**

**Ms. S. Suryawanshi, learned Presenting Officer for the Respondents.**

**CORAM : SHRI A.P. KURHEKAR , MEMBER (J)**

**DATE : 30.04.2019.**

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### **J U D G M E N T**

1. Heard Smt. Punam Mahajan, learned Advocate for the Applicant and Ms. S. Suryawanshi, learned Presenting Officer for the Respondents.
2. Being aggrieved by transfer order dated 28.09.2017, the Applicant has filed the present Original Application invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.
3. Shortly listed facts giving rise to the application can be stated as follows :-

The Applicant was working as Assistant Sub-Inspector at Immoral Human Trafficking Branch Palghar since 31.05.2016. He had not completed normal tenure at Immoral Human Trafficking Branch Palghar. However, by impugned order dated 28.09.2017 he was transferred from Immoral Human Trafficking Branch Palghar to Traffic Control, Palghar. The Applicant has challenged this transfer order alleging that the same as punitive and he has been victimized because of raising some grievance and malfunctioning of the Department through letter dated 08.01.2017 addressed to the Respondent No.3, Superintendent of Police. He further contends that on 25.07.2017 Shri Maruti Patil, Assistant Police Inspector of Immoral Human Trafficking Branch Palghar verbally abused him and therefore he has filed complaint in Police Station against him. On the same day, Shri Maruti Patil had also lodged counter complaint against him. It is on this background abruptly by order dated 28.09.2017, the Respondent No.3 transferred him to Traffic Control, Palghar. He contends that the grounds relied by Police Establishment Broad (PEB) for his transfer is non-existent and he has been victimized because of his complaint to Superintendent of Police on 08.01.2017. He claims to be honest and sincere while charging his duties at Immoral Human Trafficking Branch Palghar. He further contents that the PEB minutes were

prepared later on for the sake of record and in fact, the Respondent No.3 - Superintendent of Police was not present in the meeting. He, therefore, contends that the impugned transfer is in contravention of Section 22-N (2) of Maharashtra Police Act, 1951 (hereinafter referred to as "Police Act 1951") as well as instructions issued in circular dated 07.10.2016.

4. The Respondents resisted the application by filing the Affidavit-in-reply *inter-alia* denying the allegations made by the Applicant. The Respondents sought to justify the impugned transfer order contending that it is consistent with Section 22-N (2) of "Police Act 1951", in view of the default report dated 01.03.2017 submitted by Shri Yogesh Kumar, Additional Superintendent of Police as well as conduct of the Applicant. In this behalf, the Respondents contend that the Applicant indulged in activities subverting to the discipline of the Department by divulging some information about the functioning of the Department to the Press and got it published in Newspaper. Therefore, the Additional Superintendent of Police - Shri Yogesh Kumar had proposed for enquiry against him. In addition to it, his continuation in Immoral Human Trafficking Branch Palghar was found harmful for the functioning of the Department in view of his behavior with Shri Maruti Patil, who had also lodged complaint against him. It is on this background, the Applicant had requested the Superintendent of Police for meeting in Orderly Room. Accordingly, on 27.09.2017, the hearing was given to the Applicant in Orderly Room, where he apologized for the mistake and also requested to transfer him to Traffic Control, Palghar. Accordingly, the meeting of PEB was conveyed on 28.09.2017, wherein the subject was discussed and PEB unanimously approved the transfer of the Applicant invoking Section 22-N (2) of the "Police Act 1951" as the same was necessitated in public interest as well as on account of administrative exigencies. The Respondents denied that the minutes of PEB was

*W. Kumar*

prepared later on as alleged by the Applicant. The Respondents with these pleadings prayed to dismiss the application.

5. Smt. Punam Mahajan, learned Advocate of the Applicant sought impugned order contending that the grounds relied by the PEB are non-existent, and therefore, the recourse of Section 22-N (2) taken by PEB is unsustainable. She further alleged that there is no compliance of the instructions contained in the Circular dated 07.10.2016, which *inter alia* provides procedure to be adopted while transferring police personnel on complaint. She further contends that, in fact, the minutes of PEB was prepared and signed by Respondent No.3 later on and he was not at all present in the meeting of PEB. According to her, as per information received under Right to Information Act, the Respondent No.3 at the relevant time was present in the meeting in the Collector's Office. On this line of submission, she contends that it is only because of complaint made by Applicant with the Respondent No.3 on 08.01.2017 highlighting inefficiency of Immoral Human Trafficking Branch Palghar, the Respondent No.3 got annoyed and the Applicant has been punished by shifting him out of the said Branch. She therefore urged that the impugned order is not sustainable in law and facts and the same is liable to be quashed.

6. Per contra, Ms. S. Suryawanshi, learned Presenting Officer for the Respondents supported the impugned transfer order contending that the PEB being Competent Authority, it found the continuation of the Applicant in the Branch subverting the interest of Department, and therefore, on administrative ground as well as in the interest of public, the Applicant had been transferred invoking Section 22-N (2) of "Police Act 1951". She has further pointed out that the record produced falsifies the stand taken by the Applicant about absence of Respondent No.3 in PEB meeting.

6. In view of the submissions advanced at the Bar, the question posed is whether in the facts and circumstances of the case, the Respondents have made out of the case of mid-term and mid-tenure transfer and the transfer is consistent with Section 22-N (2) of "Police Act 1951" which *inter-alia* empowers PEB to transfer police employees mid-term and mid-tenure in public interest and on account of administrative exigencies.

7. Admittedly, the Applicant had not completed his normal tenure of five years as contemplated in Section 22 N (i) (b) of "Police Act 1951". Now, let us see the minutes of PEB, which are at page No.69 of the Paper Book. The PEB had noted the following aspects in minutes :-

- (i) Shri Maruti Patil, Assistant Police Inspector of Immoral Human Trafficking Branch Palghar has lodged NC vide Crime No.4614 of 2017 under Section 506 of I.P.C. against the Applicant.
- (ii) In view of aforesaid NC, the preliminary enquiry had been already initiated and it is underway.
- (iii) In 2007, offence under Section 7 of Prevention of Corruption Act, 1988 was registered against the Applicant. Though the Applicant was acquitted, his acquittal was given on the principal of benefit of doubt which shows that his integrity is not beyond doubt.
- (iv) The Applicant had divulged certain information about the functioning of the Department to the Press and got it published in Newspaper in daily "Lok Satta" on 10.02.2017 under caption 'निष्क्रियतेकडे पोलीसांचेच बोट'. The said act of the Applicant had maligned

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the image of Police in public and the Applicant had also committed breach of Conduct Rules by giving such information to press.

- (v) On the request of Applicant, the hearing was giving to him in Orderly Room on 27.09.2017, where he admitted the mistake and apologized for the same and also requested for his transfer to Traffic Control, Palghar.

8. Thus, the PEB consists of three members presided over by Superintendent of Police deliberated on the above aspect and resolved that the continuation of the Applicant in Immoral Human Trafficking Branch Palghar would be subverting to the interest of Department, as he had found indulged in the activities maligning the image of Police Department. The PEB thus concluded that in the public interest and on account of administrative exigencies, the Applicant deserves to be transferred invoking Section 22-N (2) of "Police Act 1951". Accordingly, the PEB unanimously decided to transfer the Applicant. Consequently, by impugned order, the Applicant has been transferred to Traffic Control, Palghar.

9. Needless to mention that the transfer is an incidence of service and ordinarily those are made in exercise of administrative function to meet the exigencies of service and in public interest. Order of transfer can be questioned in the Court or Tribunal only where it is *malafide* or made in violation of statutory provisions. Sufficient to say, unless the order of transfer is in conflict with rules or express legal provisions, the Court should decline to interfere in such transfer. In this behalf, it would be useful to refer the Judgment of Hon'ble Supreme Court in **1993 AIR 2444 (Union of India Vs. S.L. Abbas)** wherein the Hon'ble Apex Court held that the order of transfer can be questioned in the Court or Tribunal only

where it is *malafide* or made in violation of statutory provisions. It has been further held that the Tribunal is not an Appellate Authority sitting in Judgment over the orders of transfers and it cannot substitute its own Judgment for that of the authority competent to transfer.

10. Now, turning to the minutes of PEB, it is true that one of the aspects noted by PEB about criminal prosecution of the Applicant under the provisions of Prevention of Corruption Act, 2007 has become non-existent in view of his acquittal long back and lapse of time. It has no co-relation with the impugned transfer order. Secondly, it is also equally true that the preliminary enquiry ordered by Respondent No.3 relating to giving information to Press and its publication in Newspaper, the Show Cause Notice issued by Respondent No.3 was cancelled as seen from letter dated 13.11.2017. Thus, it seems that after transfer of the Applicant, the Show Cause Notice given to the applicant was cancelled for the time being, as a result of which, no enquiry was further continued against the Applicant.

11. However, in my considered opinion, these two aspects will not render transfer order illegal in view of other aspects deliberated and discussed by PEB for the transfer of the Applicant. The PEB in its minutes has specifically observed that Shri Maruti Patil, A.P.I. had lodged NC for the offence under Section 506 against the Applicant. It may be noted that the Applicant had also lodged N.C. against Shri Maruti Patil and had also filed criminal prosecution. Thus, it cannot be ignored that though the Applicant was subordinate to Shri Maruti Patil, there was no co-ordination in the functioning of Immoral Human Trafficking Branch, Palghar. On the contrary, there seems to be internal bickering between them which was not conducive for the healthy functioning of the unit. As such, from the point of discipline and administration, the PEB thought it proper to transfer

*W. S. Patil*

the Applicant. Such objective decision from the point of administrative exigencies can hardly be termed *malafide*.

12. Furthermore, on the request of Applicant, the hearing was given to him in Orderly Room on 27.09.2017. The Respondents have produced copy of Notings made by Respondent No.3 after giving hearing to the Applicant in Orderly Room, which are at Page Nos.175 to 177. The Applicant's application for hearing in Orderly Room dated 15.09.2017 is at page 175. The Respondent No.3 made endorsement "he has apologized and requested posting in Traffic Control, Palghar". Below this endorsement, the Respondent No.3 put his signature. Though the Applicant denied to have made any such statement before Respondent No.3, I see no reason to disbelieve, The Respondent No.3 in this behalf in the light of endorsement he made on hearing Applicant, which is also specifically figured in minutes of PEB. No doubt, the Show Cause Notice issued to the Applicant pertaining to leakage of information to Press has been cancelled by Respondent No.3, but the fact remains that it was one of the reasons for transfer of the Applicant. True, the Applicant denied to have given any such information to the Press. However, there is specific reference in the report submitted by Shri Yogesh Kumar to the Vasai Police Station dated 31.03.2017 wherein it is stated that the Reporters of various Newspapers called up Shri Maruti Patil and informed him that despite the information given by the Applicant about inefficiency of the Unit to the Press, the Department is not taking any action. Shri Maruti Patil, A.P.I. had accordingly submitted the report. The Respondents also produced on record clipping of the Newspaper Lok Satta dated 10.02.2017 wherein there is specific mention of the disclosure made by the Applicant against his own Department. As such, said act of indiscipline of the Applicant was also one of the reasons for transfer of the Applicant as noted in the minutes of PEB.



13. As such, there was enough material before PEB to take objective decision of the situation and it found that the continuation of the Applicant in Immoral Human Trafficking Branch, Palghar shall not be conducive for the proper functioning of the Unit, and therefore, he came to be transferred to Traffic Control, Palghar from the point of administrative exigencies as well as in public interest. Needless to mention that the decision taken by PEB needs to be understood in the context of all these facts and where it is based on sufficient material and the transfer of employee found necessitated from the point of administrative exigencies or public interest, such administrative exigencies can hardly be questioned before the Tribunal. Needless to mention, how the administration has to run its affair is not the matter, which squarely falls in the judicial domain. The learned Advocate tried to make much capital for non-compliance of the instructions contained in Circular dated 07.10.2016 issued by Director General of Police, which is at page 51-A of the P.B. As per the Circular, where the transfer is necessitated on complaint, the preliminary enquiry is required to be made after giving opportunity to the employee concerned. The learned Advocate Smt. Punam Mahajan, learned Advocate for the Applicant vehemently urged that no such opportunity of hearing was given to the Applicant, as contemplated in Circular dated 07.10.2016. It may be noted that in the present matter as discussed above, the Applicant himself not only admitted his mistake but also apologized for the misdeeds as specifically noted by Superintendent of Police during hearing in Orderly Room. In such situation, no much importance can be given for the absence of recording statement of the Applicant, as contemplated in Circular dated 07.10.2016. It may be noted that the PEB found that it is Applicant who divulged certain information to the Press, which was published in various Newspapers and thereby questions on the efficiency of Police were raised. Such conduct of the Applicant found subverting

*W. S. Mahajan*

discipline in the Department. This being the position, the decision of PEB can hardly be interfered with by the Tribunal.

14. The learned P.O. rightly referred to the decision of Hon'ble Bombay High Court in **2008 (2) Mh.L.J. 640 (Shri V.V. Gadekar, Deputy Engineer Vs. MHADA)**. Needless to mention that the transfer orders can be interfered only when it is found in contravention of mandatory provisions, arbitrary or *malafide*. In this behalf, it would be appropriate to refer the Judgment of Hon'ble High Court in **2008 (2) Mh.L.J. 640 (Shri V.V. Gadekar, Deputy Engineer Vs. MHADA)**, wherein it has been held as follows :

*"Ordinarily, orders of transfer are made in the exercise of administrative authority to meet the exigencies of service and in public interest. How the Administration has to run its affairs is not a matter which squarely falls in the judicial domain. Unless the orders of transfer were in conflict with Rules and were made for ulterior motives or in patent arbitrary exercise of powers, the Court would decline to interfere in such matter. The transfer could be due to exigencies of service or due to administrative reasons. The Petitioners in the present case have failed to demonstrate as to how the order of transfer has been passed for collateral purposes or is a patent arbitrary exercise of power."*

15. At this juncture, it would be appropriate to reproduce the decision of Hon'ble Supreme Court in **(2004) 4 SCC 245 (Union of India Vs. Janardhan Debanath & Anr.)** in Para No.14 is as follows :

*"14. The allegations made against the respondents are of serious nature, and the conduct attributed is certainly unbecoming. Whether there was any misbehaviour is a question which can be gone into in a departmental proceeding. For the purposes of effecting a transfer, the question of holding an enquiry to find out whether there was misbehaviour or conduct unbecoming of an employee is unnecessary and what is needed is the prima facie satisfaction of the authority concerned on the contemporary reports about the occurrence complained of and if the requirement, as submitted by learned counsel for the respondents, of*

*holding an elaborate enquiry is to be insisted upon the very purpose of transferring an employee in public interest or exigencies of administration to enforce decorum and ensure probity would get frustrated. The question whether respondents could be transferred to a different division is a matter for the employer to consider depending upon the administrative necessities and the extent of solution for the problems faced by the administration. It is not for this Court to direct one way or the other. The judgment of the High Court is clearly indefensible and is set aside. The writ petitions filed before the High Court deserve to be dismissed which we direct. The appeals are allowed with no order as to costs."*

16. Lastly, feeble attempt was made by the learned Advocate for the Applicant to show that Respondent No.3 was not present in the PEB meeting held on 27.09.2017 at 2.00 p.m. She has pointed out that as per information under Right to Information Act, the Respondent No.3 was present in another meeting held in Collector's Office from 1.00 p.m. to 6.00 p.m. In this respect, she referred to information collected under RIT Act, which is at page 130 of the P.B. It shows that there was meeting of District Planning Committee in Collector's office at Palghar. It started at 1.00 p.m. and tentatively ended by 6.00 p.m. to 6.15 p.m. The name of Respondent No.3 is figured in the list of persons who attended the said meeting. Whereas the learned P.O. has filed Affidavit of Respondent No.3 wherein he explained that he attended meeting held in the Collector's office but returned back to his office at 2.00 p.m. and then attended PEB meeting in between 2.00 p.m. to 3.00 p.m. The Respondents have also produced e-weekly-statement furnished by the Applicant to the Director General of Police wherein also, there is specific mention of attendance of Respondent No.3 in PEB meeting on 27.09.2017 at 2.00 p.m. This statement pertains to work done by Respondent No.3 day to day and seems to have been forwarded to I.G. as per regular practice. Only because there is no specific mention of travel from Collector's office to S.P's office at 2.00 p.m. in Log Book of official vehicle, it does not mean that the

*See below*

Respondent No.3 had not attended the meeting of PEB. In Log Book, there is entry of total journey of 17 kms. from his residence to the S.P. office, Collector's office and back to S.P.'s residence. Thus, he has recorded total mileage as 17 kms. for entire day. I do not think that absence of entry in Log Book that the Respondent No.3 came back to Office at 2.00 p.m. makes any difference.

17. The learned Advocate for the Applicant sought to place reliance on the Judgment of this Tribunal delivered in *O.A.13/2017 (Ramesh N. Swami Vs. State of Maharashtra & 3 Ors.) decided on 22.09.2017* wherein transfer order was quashed. I have gone through the Judgment and found that the facts are quite distinguishable and it is of no assistance to the Applicant in the present fact situation. Needless to mention that each case needs to be decided on the factual background, keeping in mind legal principles and statutory provisions and the ratio of any decision must be understood in the background of the fact of that case and a little difference in the facts or additional fact may make a lot of difference in the precedential value of a decision. In O.A.13/2017, no case was made out for mid-term and mid-tenure transfer, as no reasons were recorded by PEB to justify the transfer. Whereas, in the present case, the PEB has recorded elaborate reasons and resolved that the transfer of the Applicant is necessitated from the point of administrative exigencies and in public interest as contemplated under Section 22-N(2) of "Police Act 1951".

18. The totality of aforesaid discussion leads me to sum-up that the challenge to impugned transfer is devoid of merit and O.A. deserves to be dismissed. Hence, the following order.

**ORDER**

The Original Application is dismissed with no order as to costs.

Sd/-

**(A.P. KURHEKAR)**  
**MEMBER (J)**

Mumbai

Date : 30.04.2019

Dictation taken by :

S.K. Wamanse.

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