

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.902 OF 2023

DISTRICT : MUMBAI
SUBJECT : POSTING

Shri Bapu Baburao Anuse.)
Age : 36 Yrs, Working as Police Constable,)
[Buckle No.080784], attached to Marol)
Head Quarter, Andheri (E), Mumbai,)
R/o. Room No.902, Jaibhawani CHS,)
Link Road, Kandiwali (W),Mumbai.)...**Applicant**

Versus

1. The Commissioner of Police,)
Mumbai, Having office at Mumbai)
Police Commissionerate, L.T. Marg,)
Opp. Crawford Market, Fort,)
Mumbai – 400 001.)
2. The Assistant Commissioner of)
Police, Main Control Room in the)
Office of Commissioner of Police,)
Mumbai and having office at)
D.N. Road, Mumbai – 400 001.)
3. The Additional Commissioner of)
Police, Armed Police, Naigaon,)
Mumbai – 400 014.)...**Respondents**

Shri Arvind V. Bandiwadekar, learned Advocate for Applicant.

Smt. Kranti S. Gaikwad, learned Presenting Officer for Respondents.

CORAM : DEBASHISH CHAKRABARTY, MEMBER (A)

PRONOUNCED ON : 18.12.2024

J U D G M E N T

1. The Applicant who is serving as 'Police Constable' has invoked provisions of 'Section 19' of 'The Administrative Tribunal Act, 1985' to challenge 'Order' dated 07.07.2023 passed by 'Commissioner of Police, Greater Mumbai' read with 'Order' dated 10.07.2023 passed by 'Additional Commissioner of Police; Greater Mumbai' by which he came to be transferred from 'DN Nagar Police Station' to 'Local Armed Branch' and assigned duty at Marol.

2. The learned Advocate for Applicant stated that Applicant was posted to 'D.N. Nagar Police Station' on 09.08.2021. However, due to some domestic misunderstanding with his 'Wife'; she happened to file 'Written Complaint' on 14.01.2023 with 'Senior Police Inspector' of D.N. Nagar Police Station' leveling some charges of ill-treatment by Applicant.

3. The learned Advocate for Applicant then stated that 'Senior Police Inspector' of 'D.N. Nagar Police Station' had soon thereafter submitted report to 'Deputy Commissioner of Police' of 'Zone 9 Greater Mumbai' about alleged 'Personal Misconduct' of Applicant. The 'Deputy Commissioner of Police' of 'Zone 9 Greater Mumbai' forthwith placed Applicant under 'Suspension' by 'Order' dated 24.01.2023 on grounds that 'Departmental Enquiry' was required to be conducted against Applicant about 'Written Complaint' received from his 'Wife' on 14.01.2023 and for charges of unauthorized absenteeism while serving at 'D.N. Nagar, Police Station'.

4. The learned Advocate for Applicant further stated that thereafter his 'Wife' had submitted another letter dated 6.2.2023 to 'Senior Police Inspector' of 'D.N. Nagar Police Station' stating therein that 'Written Complaint' dated 14.01.2023 which was filed earlier by her was due to some misunderstanding about 'Personal Conduct' of her 'Husband' and thereby requested 'Senior Police Inspector' of 'D.N. Nagar Police Station' to treat as cancelled 'Written Complaint' filed earlier on 14.01.2023.

5. The learned Advocate for Applicant thereupon emphasized that it appears that 'Senior Police Inspector' of 'D.N. Nagar Police Station' did not forward subsequent letter dated 06.02.2023 from 'Wife' of Applicant to 'Deputy Commissioner of Police' of 'Zone 9, Greater Mumbai'. Therefore; in absence of any knowledge regarding withdrawal of 'Written Complaint' filed by 'Wife' of Applicant on 14.01.2023; the 'Deputy Commissioner of Police' of 'Zone 9 Greater Mumbai' proceeded to pass 'Order' of Suspension' of Applicant on 24.01.2023 and initiated 'Departmental Enquiry' by issuing 'Charge-Sheet' to Applicant on 13.3.2023. The 'Assistant Commissioner of Police, of 'Oshiwara Division' was appointed as 'Enquiry Officer'.

6. The learned Advocate for Applicant then mentioned that 'Departmental Enquiry' came to be concluded expeditiously by 'Assistant Commissioner of Police' of 'Oshiwara Division'. The Applicant in final 'Written Statement' submitted on 11.05.2023 had explained that being totally innocent the 'Disciplinary Authority' should exonerate; him as his 'Wife' had withdrawn on 06.02.2023 the 'Written Complaint' filed earlier on 14.01.2023 which happened to be much prior to issue of 'Charge Sheet' on 13.03.2023 by 'Deputy Commissioner of Police' of 'Zone 9 Greater Mumbai'.

7. The learned Advocate for Applicant then mentioned that since 'Departmental Enquiry' had been expeditiously concluded by 'Assistant Commissioner of Police' of 'Oshiwara Division'; the 'Deputy Commissioner of Police' of 'Zone 9 Greater Mumbai' passed 'Order' on 20.6.2023 to revoke 'Suspension' of Applicant and upon reinstatement he was posted to 'Main Control Room'. The Applicant as obedient 'Police Constable' had forthwith rejoined duty and started working at 'Main Control Room'.

8. The learned Advocate for Applicant thereafter emphasized that as nothing adverse had been found against Applicant in 'Departmental Enquiry' and since he was not due for transfer from 'D.N. Nagar Police Station'; therefore after 'Order of 'Suspension' had been revoked on 20.06.2023, the

Applicant had submitted representations to 'Commissioner of Police, Greater Mumbai' on 04.07.2023 and 17.07.2023 with request to reinstate him back on post of 'Police Constable' at 'D.N. Nagar Police Station' or in the alternate transfer him to 'Kandiwali Police Station' or 'Boriwali Police Station' or 'Malwani Police Station' or 'Traffic Division', so as to enable him to take personal care of his 'Elderly Parents' more particularly ailing 'Mother'.

9. The learned Advocate for Applicant then referred to 'Affidavit-in-Rejoinder' dated 05.09.2024 of Applicant to emphasize that as 'Charge No.2' against Applicant had not been proved in 'Departmental Enquiry' which was regarding 'Written Compliant' filed on 14.01.2023 filed by his 'Wife'; therefore it should be treated as closed subject and no penal action should now be contemplated against Applicant. Although; the 'Wife' of Applicant had already withdrawn 'Written Compliant' filed on 14.01.2023 by another letter dated 06.02.2023 and even 'Enquiry Officer' had speedily completed 'Departmental Enquiry' against Applicant and then submitted 'Enquiry Report' on 06.06.2023; yet without deciding about imposition of proportionate penalty under 'Section 25' of 'The Maharashtra Police Act, 1951' after about 'One Month' on 06.07.2023; the 'PEB' abruptly recommended transfer of Applicant from 'D.N. Nagar Police Station'. The Applicant came to be transferred by 'Order' dated 07.07.2023 of 'Commissioner of Police, Greater Mumbai' read with 'Order' dated 10.7.2023 passed by 'Additional Commissioner of Police; Greater Mumbai' to 'Local Armed Branch' and then assigned duty at Marol.

10. The learned Advocate for Applicant stressed that Applicant had remained absent from duty just about 10 days i.e. from 14.1.2023 to 23.1.2023 for which later on he was granted 'Casual Leave' by 'Senior Police Inspector' of 'D.N. Nagar Police Station'. Thus, this short period of unauthorized absence from duty of about 10 days had also been regularized by 'Senior Police Inspector' of 'D.N. Nagar Police Station'.

11. The learned P.O. per contra relied on 'Affidavit-in-Reply' dated 21.08.2023 filed on behalf of 'Commissioner of Police, Greater Mumbai' to mention about backdrop of events which had resulted in institution of 'Departmental Enquiry' on 13.03.2023 against Applicant. The Applicant was on duty on 14.01.2023 when he suddenly at about 11:00 a.m. went home after informing 'Senior Police Inspector' of 'D.N. Nagar Police Station' that he will return within some time; but not only did Applicant not come back on 14.01.2023 to resume duty but without any prior permission remained absent from duty till his 'Suspension' on 24.01.2023. Thus; considering this unauthorized absence of Applicant and serious allegations in the 'Written Complaint' filed by 'Wife' on 14.01.2023: the 'Deputy Commissioner of Police' of 'Zone 9 Greater Mumbai' had passed 'Order of Suspension' of Applicant on 24.01.2023. Further, based on proposal submitted by 'Assistant Commissioner of Police' of 'Oshiwara Division', it was decided to institute 'Departmental Enquiry' against Applicant with 'Charge Sheet' being served on him on 13.03.2023.

12. The learned P.O. confirmed that 'Departmental Enquiry' against Applicant was entrusted to 'Assistant Commissioner of Police' of 'Oshiwara Division' as 'Enquiry Officer'. The 'Enquiry Officer' had given Applicant sufficient opportunity to prove his innocence and after considering evidence recorded during 'Departmental Enquiry', submitted 'Enquiry Report' on 06.06.2023. The findings of 'Enquiry Officer' was that 'Charge No. 1' and 'Charge No. 3' were proven but 'Charge No. 2' was not established against Applicant. The 'Enquiry Officer' recommended to 'Deputy Commissioner of Police' of 'Zone 9 Greater Mumbai' to take further action against Applicant to impose penalty under provisions of 'Rule 3' of 'Bombay Police (Punishment and Appeals) Rules, 1956' based on proven 'Charge No.1' and 'Charge No.3' of 'Departmental Enquiry'.

13. The learned P.O. then drew attention to specific issues related to 'Written Complaint' filed by 'Wife' of Applicant on 14.01.2023 which were about 'Matrimonial Dispute'. The 'Wife' of Applicant had subsequently on

06.02.2023 written letter to 'Senior Police Inspector' of 'D.N. Nagar Police Station' conveying withdrawal of 'Written Complaint' filed earlier on 14.01.2023 when she happened to be living with her 'Husband' and 'Parents in Law'. Hence; after considering all these aspects and because it was case of 'Matrimonial Dispute', the 'Enquiry Officer' had consciously taken lenient view while recording findings in respect of 'Charge No.2' of 'Departmental Enquiry'.

14. The learned P.O. thereafter referred to 'Affidavit-in Sur Rejoinder' dated 26.10.2023 filed on behalf of 'Commissioner of Police, Greater Mumbai' to justify immediate transfer of Applicant by emphasizing that proper procedure was observed to transfer him from 'DN Nagar, Police Station' based on recommendation made by 'PEB' in meeting held on 06.07.2023. The transfer of Applicant from 'D.N. Nagar Police Station' to 'Local Armed Branch' with assignment of duty at Marol was therefore entirely justiciable as it had been effected after considering all facets relating to Applicant. The Applicant was not entitled to seek reinstatement on earlier post in 'DN Nagar Police Station'; because he had been placed under 'Suspension' on 24.01.2023 and then 'Departmental Enquiry' was also instituted against him not just about the 'Written Complaint' filed by his 'Wife' on 14.01.2023; but also for two others charges relating to 'Public Conduct' and 'Habitual Absentism' which had been proven in 'Departmental Enquiry'. The 'D.C.P Armed Police, Marol' on 11.10.2023 had accordingly served 'Show Cause Notice' on Applicant proposing imposition of penalty of "Stoppage of Annual Increments for 3 years without affecting future Annual Increments".

15. The learned P.O. then referred to 'Short Affidavit' dated 19.01.2024 filed on behalf of 'Commissioner of Police, Greater Mumbai' to submit that as per relevant provisions of 'Maharashtra Police (Punishment & Appeal) Rules, 1956' framed under 'Section 25(2)(c)' of 'The Maharashtra Police Act 1951', the list of 'Competent Authority' who are empowered to pass order of 'Suspension' of 'Police Personnel' or impose 'Penalty' on their was published

by 'Notification' dated 12 January, 2011 of 'Home Department'. Further; 'DGP, Maharashtra State, Mumbai' in 'Para 3' of 'Officer Circular' dated 10.02.2016 has directed that following course of action should be taken after reinstatement of such 'Police Personnel':

"अशा आढाव्याअंती, त्यांचे निलंबन संपुष्टात आणण्याचा निर्णय घेतल्यानंतर त्यांना अकार्यकारी पदावर (म्हणजे नियंत्रण कक्ष, विशेष शाखा, जिल्हाविशेष शाखा) व जनसंपर्क येणार नाही, अशा ठिकाणी प्रचलित नियमांचे पालन करून, अन्य परिक्षेत्रात नियुक्ती देण्याबाबतची कार्यवाही संबंधित शिस्तभंगविषयक निर्णय घेणाऱ्या सक्षम प्राधिकाऱ्यांनी करावी"

16. The learned PO emphasized that 'Deputy Commissioner of Police' of 'Local Armed Branch, Marol' thus had full powers for imposition of any 'Penalty' on Applicant either under 'Section 25(1)' or 'Section 25(1A)' of 'The Maharashtra Police Act, 1951'. Further this contention about competency of 'Deputy Commissioner of Police' of 'Local Armed Branch, Marol' to impose any 'Penalty' on Applicant holds no ground because by 'Judgment' dated 27.09.2022 in O.A. No. 613/2022 the delegation of such 'Statutory Powers' in respect of 'Police Constables' to respective Deputy Commissioners of Police has been upheld through interpretation of 'Section 10(2)' of 'The Maharashtra Police Act 1951'. The contents of 'Para 8' of this 'Judgment' dated 27.09.2022 in O.A. No. 613/2022 are reproduced below:-

"Suffice to say, Deputy Commissioner of Police. If specifically empowered by Commissioner of Police under section 10(2) of Maharashtra Police Act, he is competent to exercise all powers including powers of suspension. Only because in Notification dated 22.01.2011 the name of DCP is not figured that would not take away source of power given to DCP within the meaning of section 10(2) of Maharashtra Police Act. 1, therefore, see no illegality in issuance of suspension order by Deputy Commissioner of Police."

17. The learned PO thereafter mentioned that 'Deputy Commissioner of Police' of 'Local Armed Branch, Marol' by 'Order' dated 01.01.2024 had accordingly imposed 'Penalty' of 'Fine of Rs. 5000/-' on Applicant under 'Section 25(1A)' of 'The Maharashtra Police Act, 1951' on the ground that 'Charge No. 1' & 'Charge 3' had been proven in 'Departmental Enquiry'.

18. The Applicant had been exonerated from 'Charge No.2' relating to 'Written Compliant' earlier filed by Wife on 14.01.2023 which constituted the

principal reason for immediate 'Suspension' of Applicant on 24.01.2023. The 'Deputy Commissioner of Police' of 'Zone 9 Greater Mumbai' had placed 'Applicant' under 'Suspension' on 24.01.2023 under 'Proviso Clause' of 'Section 25(1)' of the Maharashtra Police Act 1951' much before institution of 'Departmental Enquiry' for which 'Charge Sheet' was served to Applicant on 13.03.2023. The provisions of 'Section 25(1)' of 'The Maharashtra Police Act 1951' is contextual and thus reproduced below:-

(1) The State Government or any officer authorised under sub-section (2), in that behalf, may impose upon an Inspector or any member of the subordinate ranks of the Police Force, who in the opinion of the State Government or such authorised officer, is cruel, perverse, remiss or negligent in, or unfit for, the discharge of his duties, any one or more of the following penalties, namely:—

(a) recovery from pay of the whole or part of any pecuniary loss caused to Government on account of the negligence or breach of orders on the part of such Inspector or any member of the subordinate rank of the Police Force;

(b) suspension;

(c) reduction in rank, grade or pay, or removal from any office of distinction or withdrawal of any special emoluments;

(d) compulsory retirement;

(e) removal from service which does not disqualify for future employment in any department other than the Police Department;

(f) dismissal which disqualifies for future employment in Government service:

Provided that, suspension of a Police Officer pending an inquiry into his conduct or investigation of a complaint against him of any criminal offence shall not be deemed to be a punishment under clause (b).....

The Applicant as is rather evident had not been placed under 'Suspension' which is to be regarded as 'Penalty' imposed under provisions of 'Section 25(1)(b)' of 'The Maharashtra Police Act 1951' after conduct of 'Departmental Enquiry'. Hence; 'Suspension of Applicant on 24.01.2023 was not penal in nature and this must be clearly distinguished in context of framework of law which also enables 'Suspension' of Police Personnel' under the 'Proviso Clause' of 'Section 25(1)' of 'The Maharashtra Police Act 1951'.

19. The prayer of Applicant that he be reinstated back to 'DN Nagar, Police Station' is cushioned by the fact that (a) 'Written Complaint' initially filed by 'Wife' on 14.01.2023 came to be subsequently withdrawn on 06.02.2023 (b) 'Departmental Enquiry' did not establish 'Charge No.2' which was specifically about 'Written Complaint' filed by 'Wife' on 14.01.2023 & (c) 'Departmental

Enquiry' which established 'Charge 1' and 'Charge 3' resulted in only 'Penalty' of 'Fine of Rs. 5000/-'. Hence; against this background it was sought to be ascertained from 'Commissioner of Police, Greater Mumbai' if upon revocation of 'Suspension' of 'Police Personnel' especially in respect of 'Police Constables' whether they have to be invariably transferred to 'Local Armed Branch' as per directions in 'Circulars' of 'Joint Commissioner of Police, (Adm) Greater Mumbai' dated 01.09.2018 and 01.11.2023. However, no disclosures came to be made to either affirm or deny if exceptions had ever been made to these directions in 'Circulars' dated 01.09.2018 and 01.11.2023 of 'Joint Commissioner of Police, (Adm) Greater Mumbai' at 'Highest Level' of 'Commissioner of Police, Greater Mumbai' and if there were some precedences of 'Police Constables' upon revocation of 'Suspension' being reinstated in 'Other Branches' such as 'Special Branch', Traffic Branch' etc. or even at 'Police Stations'.

20. The 'Affidavit-in-Reply' dated 06.02.2024 and 'Affidavit-in-Reply' dated 27.03.2024 filed on behalf of 'Commissioner of Police, Greater Mumbai' are ambiguous with respect of specific disclosures sought about precedence of some exceptions if any which had been made in respect of any 'Police Constable' at the 'Highest Level' of 'Commissioner of Police, Greater Mumbai'. The Circular dated 01.11.2023 of 'Joint Commissioner of Police (Adm) Greater Mumbai' is direction based to the extent that upon revocation of 'Suspension' of 'Police Personnel' they are to be necessarily reinstated in 'Local Armed Branch'.

21. The case of Applicant thus raises narrow question of law as to whether upon revocation of 'Suspension' of 'Police Personnel'; they can be directed to be compulsory reinstated in 'Local Armed Branch' without consideration of specific facts and circumstances of each case by resorting to an "All & Sundry" approach based on 'Circular' dated 01.11.2023 of 'Joint Commissioner of Police (Adm) Greater Mumbai'. The reinstatement of 'Police Personnel' upon revocation of 'Suspension' when not done to their earlier post would thus be categorized as 'Mid Term Transfer' under provisions

‘Section 2(6A)’ read with ‘Section 2(6B)’ of ‘The Maharashtra Police Act 1951’ when approved at level of ‘Competent Authority’ under provision of ‘Section 22N(2)’ based only on grounds such as (a) ‘In Exceptional Cases’ (b) ‘In Public Interest’ and (c) ‘On Account of Administrative Exigencies’.

22. The case of Applicant which ticks the box of routine ‘Mid Term Transfer’ of ‘Police Personnel’ under ‘Section 2(6A)’ read with ‘Section 2(6B)’ of the ‘Maharashtra Police Act 1951’ must invariably be understood as an ‘Implied Condition of Service’. Hence; from this perspective after initiation of ‘Departmental Enquiry’ on 13.03.2023 and then revocation of ‘Suspension’ on 20.06.2023 and transfer to ‘Local Armed Branch’ as per ‘The Circular dated 01.11.2023 of ‘Joint Commissioner of Police (Adm) Greater Mumbai’ was an equally probable event which could occur under provisions of ‘Section 22N(2)’ of ‘The Maharashtra Police Act 1951 even if there were to be no ‘Written Complaint’ filed by ‘Wife’ on 14.01.2023 or preceeding ‘Suspension’ on 24.01.2023.

23. **The Hon’ble Supreme Court of India in K. Sivankutty Nair v. Managing Director, Syndicate Bank, 1984 (2) Serv LR 13 (Kant); Chief General Manager (Telecom) v. Rajendra Ch. Bhattacharjee, (1995) 2 SCC 532 : SC 813 : (1995) 2 Serv LR 1** has also observed that an employee cannot, as a matter of right, seek transfer to a place of his choice. The **Hon’ble Supreme Court of India in UOI v NP Thomas, AIR 1993 SC 1605 : (1993) Supp (1) SCC 704** has further observed that since posts in public employment are generally transferable post, it follows that an employee has no vested right to remain at the post of his posting. The **Hon’ble Supreme Court of India in UOI v SL Abbas, AIR 1993 SC 2444 : (1993) 4 SCC 357** has also observed that who is to be transferred where, is a matter to be decided by ‘Competent Authority’.

24. The transfer of Applicant by ‘Order’ dated 10.07.2023 of ‘Commissioner of Police, Greater Mumbai’ read with ‘Order’ dated 10.7.2023 passed by ‘Additional Commissioner of Police; Greater Mumbai’ from ‘DN

Nagar Police Station to 'Local Armed Branch' with assignment of duty at Marol does not infringe provisions of law under 'Section 22(N)(1)(b)' of 'The Maharashtra Police Act 1951' which provides 'Police Constables' with 'Normal Tenure' of 'Five Years' at 'One Place of Posting'. The Applicant continues to serve in establishment of 'Commissioner of Police, Greater Mumbai' even after reinstatement on 20.06.2023 in 'Local Armed Branch' which comes within 'One Place of Posting' as enunciated by '**Judgment dated 01.09.2021 of Hon'ble High Court at Bombay in Writ Petition No. 9984/2019 and other Writ Petitions : State of Maharashtra & Anr. Vs. Anuradha S. Dhumal & Ors.**

25. The 'Statutory Right' of Applicant as provided by 'Section 22N(1)(b)' of 'The Maharashtra Police Act 1951' is not infringed because transfer effected from 'D.N. Nagar, Police Station' to 'Local Armed Branch' by 'Order' dated 07.07.2023 passed by 'Commissioner of Police, Greater Mumbai' read with 'Order' dated 10.7.2023 passed by 'Additional Commissioner of Police; Greater Mumbai' with assignment of duty at Marol following reinstatement after revocation of 'Suspension' on 20.06.2023 by relying on directions in 'Circular' dated 01.11.2023 of 'Joint Commissioner of Police, (Adm) Greater Mumbai' does not displace Applicant in any manner so as to truncate his 'Normal Tenure' of 'Five Years' at 'One Place of Posting' under establishment of 'Commissioner of Police, Greater Mumbai'. Hence, the following Order.

ORDER

- A) The O.A. No. 902/2023 is Dismissed.
- B) No Order as to Cost.

Sd/-
(Debashish Chakrabarty)
Member (A)

Place: Mumbai
Date:
Dictation taken by: N.M. Naik.

Uploaded on:_____