

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1008 OF 2023

DISTRICT : MUMBAI

SUB : TRANSFER

Shri Gopal Ramesh Kale ,)
Age : 29 Yrs, working as Police)
Constable, (Buckle No.490), State)
Reserve Police Force, Group no.VIII)
Western Express Highway, Goregaon)
(E), Mumbai 65.)
R/at Administrative Building Force)
1, Head Quarter.)...**Applicant**

Versus

1. The Director General and Inspector)
General of Police (M.S.), Mumbai,)
Office at Old Council Hall, Shahid)
Bhagatsingh Marg, Mumbai 400039.)
2. The Additional Director General of)
Police, State Reserve Police Force,)
(M.S.), Mumbai.)
3. The Commandant, State Reserve)
Police Force, Group No.VIII,)
Western Express Highway,)
Goregaon (E), Mumbai 65.)
4. The Commissioner of Police, Thane)
Police Commissionerate, Thane.)
5. The State of Maharashtra, through)
Additional Chief Secretary, Home)
Department, O/at Madam Cama)
Road, opp. Mantralaya, Mumbai 32.).....**Respondents**

Shri A. V. Bandiwadekar, learned Advocate for Applicant.
Smt. Archana B.K. , learned Presenting Officer for Respondents.

CORAM : Shri Debashish Chakrabarty, Member (A)

DATE : 26.04.2024

JUDGMENT

1. The Applicant who is 'Police Constable' serving in establishment of 'Commandant SRPF-Group VIII' at Goregaon (E), Mumbai has invoked provisions of 'Section 19' of 'Administrative Tribunal Act 1985' to seek 'Inter Establishment Transfer' on 'Compassionate Grounds' to establishment of 'Commissioner of Police, Thane' under provisions of 'Section 7' of 'Maharashtra SRPF Act 1951' and 'Rules 68' and 'Rule 69' of 'Maharashtra SRPF Rules 1959'.

2. The learned Advocate for Applicant stated that Applicant is serving on deputation in establishment of 'Additional Director General of Police Force-1; Maharashtra State. Mumbai' since 24.05.2019.

3. The learned Advocate for Applicant then stated that Applicant got married on 20.07.2022 and stays with his 'Wife' and 'Aged Mother' in Thane City. However, as 'Wife' of Applicant had been keeping unwell; so upon 'Medical Examination' more particularly after 'CT Scan' it was revealed that 'Wife' of Applicant is suffering from 'Brain Tumour'. The 'Medical Reports' of 'Wife' of Applicant came to be forwarded to 'Tata Memorial Hospital, Mumbai' for further 'Clinical Evaluation' when it was shockingly confirmed to be "Brain Cancer" at 'Stage-3'.

4. The learned Advocate for Applicant further mentioned that as part of his duties as 'Police Constable' in establishment of 'Commandant SRPF-Group VIII' at Goregaon (E), Mumbai, he was required to be away in 'Naxalite Areas' of 'Gadchiroli District' and 'Gondia District' which increased anxiety levels of Applicant about precarious health condition of his 'Wife' and 'Aged Mother'. The Applicant thus decided to seek 'Inter Establishment Transfer' on compassionate grounds to establishment of 'Commissioner of Police Thane' by giving up seniority of 6 years. The Applicant had accordingly submitted representation dated 20.10.2022 to 'Additional DGP SRPF Maharashtra State Mumbai' and subsequently made representation on 03.11.2022 to 'DGP Maharashtra State'.

5. The learned Advocate for Applicant thereupon stated that against background of such 'Personal Hardships', the 'Additional Director General of Police, Force-1, Maharashtra State, Mumbai' where Applicant is serving, showed sympathy and by letter dated 27.10.2022 recommended to 'Additional DGP SRPF Maharashtra State Mumbai' case of Applicant for 'Inter Establishment Transfer' to establishment of 'Commissioner of Police Thane'. However, as there were of no outcome of the earlier representations, Applicant submitted one more representation to 'DGP Maharashtra State' on 19.12.2022.

6. The learned PO relying on 'Affidavit in Reply' dated 21.09.2023 filed on behalf of 'Additional DG SRPF Maharashtra State Mumbai' stated that as per provisions of 'Rule 68' of 'Maharashtra SRPF Rules 1959', all 'Police Personnel' from the ranks of 'Police Constable' to 'Assistant Sub Inspector' can apply for 'Inter Establishment Transfer' provided that they have completed 'Five Years' of service directly under 'Additional DG SRPF Maharashtra State Mumbai'. Further, provisions of 'Rule 68' of 'Maharashtra SRPF Rules 1959' were applicable only to cases of 'Inter Group Transfers' under 'Additional DG SRPF Maharashtra State Mumbai' and are not applicable to 'Inter Establishment Transfer' as sought by Applicant to join in establishment of 'Commissioner of Police Thane'.

7. The learned P.O. further stated that 'Sub-Rule (3)' of 'Rule 68' of 'Maharashtra SRPF Rules, 1959' provides that pursuant to resignation or transfer of 'Police Personnel' from the ranks of 'Police Constable' to 'Assistant Sub Inspector' if sanctioned strength of the 'SRPF Group' is reduced by more than 10%; then such Applications for resignation or transfer are not to be considered by 'Additional DG SRPF Maharashtra State Mumbai'. Besides, it was submitted with regard to seniority of Applicant; that he was junior to many other 'Police Constables'; and therefore Applicant was not considered as being eligible for 'Inter Establishment Transfer'.

8. The learned PO thereupon stated that 'Additional DGP SRPF Maharashtra State Mumbai' had submitted report on 01.09.2023 about representations submitted by Applicant on 20.10.2022, 03.11.2022 and 19.12.2022 to 'DGP Maharashtra State'. However, 'DGP Maharashtra State' after carefully going through grounds mentioned by Applicant as well as provisions of 'Rule 68' and 'Rule 69' of 'Maharashtra SRPF Rule 1959' read with guidelines in 'Home Department' Circular dated 12.05.2021 decided not to accept request of Applicant. The decision taken by 'DGP Maharashtra State' was primarily on grounds that Applicant had not completed service of '12 years' in establishment of 'Commandant SRPF Group VIII' at 'Goregaon (E) Mumbai'.

9. The learned PO added that Applicant had joined in establishment of 'Commandant SRPF-Group VIII' on 11.08.2017 at Goregaon (E) Mumbai' but soon thereafter within 9 months was deputed to establishment of 'Additional Director General of Police Force-1; Maharashtra State, Mumbai'. The Applicant has also never served in any 'Naxalite Areas'.

10. The learned PO thereupon stated that Applicant did not meet basic 'Eligibility Criteria' of 12 Years' service in establishment of 'Commandant SRPF Group VIII' and does not fulfill guidelines issued from time to time by (i) Home Department Circular dated 10.07.1996, and (ii) Home Department GR dated 19.09.2001 and (iii) Home Department GR dated 21.10.2016. The Applicant has accordingly been informed by letter dated 25.02.2023 of 'Commandant SRPF Group VIII' at Goregaon, Mumbai that he would be considered in due course for 'Inter Establishment Transfer' in accordance with 'Home Department' GR dated 12.05.2021 as it does not mention any criteria for consideration of 'Special Cases'.

11. The learned PO relying on 'Affidavit in Sur Rejoinder' dated 30.10.2023 on behalf of 'Additional DG SRPF Maharashtra State, Mumbai' further stated that Applicant has filed Original Application No.1008/2023 on 10.08.2023 with solemn affirmation that he is taking due care of his 'Wife'. However, 'Wife' of Applicant had sent letter dated 09.10.2023 to (i)

'DGP Maharashtra State' (ii) 'Additional DGP SRPF Maharashtra State Mumbai' (iii) 'Commandant SRPF Group VIII at Goregaon (E), Mumbai that Applicant was not taking any care of her and instead she suffered harassment at the hands of Applicant. The 'Wife' of Applicant has mentioned that she was not staying with Applicant, but with her parents since 29.01.2023. The 'Wife' of Applicant had also filed complaint with 'Kongaon Police Station, Bhiwandi, Thane' on 30.06.2023 about harassment by Applicant.

12. The learned P.O. thereupon stated by relying on 'Affidavit in Sur Rejoinder dated 30.10.2023 that Applicant has served on deputation in establishment of 'Additional Director General of Police Force-I; Maharashtra State, Mumbai' since 24.05.2019 although he was appointed in establishment of 'Commandant SRPF Group VIII' at Goregaon (E), Mumbai on 11-08.2017. Hence, the Applicant does not even fulfill provisions of 5 years service in the force as required under 'Rule 68' of 'Maharashtra SRPF Rule 1959'. The Applicant has committed perjury as his 'Wife' was not staying with him since 29.01.2023 but with her parents at Pimplas Village, District Thane. The case of Applicant was frivolous in nature and filed fraudulently and maliciously with intent to satisfy ulterior motive to somehow join in establishment of 'Commissioner of Police Thane' and therefore deserves to be dismissed with 'Exemplary Cost'.

13. The submission made by Applicant to seek 'Inter Establishment Transfer' from establishment of 'Commandant SRPF : Group VIII' at Goregaon (E), Mumbai to establishment of 'Commissioner of Police, Thane' is based only on grounds of serious 'Medical Condition' of his 'Wife' and necessity of taking care of 'Aged Mother'. Further it does appear that request of Applicant was submitted in advance due to apprehension that after completion of deputation in establishment of 'Additional DG Maharashtra State Force 1' on return to establishment of 'Commandant SRPF : Group VIII' at Goregaon (E), Mumbai; Applicant would be deployed for duties at various places including 'Naxalite Areas' of 'Gadchiroli District' and 'Gondia District' and thus he would not be able to take personal care of his seriously unwell 'Wife' and 'Aged Mother'.

14. The proposal regarding 'Inter Establishment Transfer' of Applicant from establishment of 'Commandant SRPF : Group VIII' at Goregaon (E), Mumbai to establishment of 'Commissioner of Police Thane' was rejected by 'DGP Maharashtra State' after careful consideration of grounds mentioned by Applicant in view of provisions of 'Rule 68' and 'Rule 69' of 'Maharashtra SRPF Rules 1959' and 'Home Department' Circular dated 12.05.2021 which prescribes minimum service of '12 years' before any consideration can be given to request for 'Inter Establishment Transfers'.

15. The representations submitted by Applicant who is borne in establishment of 'Commandant; SRPF Group No.8, Mumbai' seeking 'Inter Establishment Transfer' to establishment of 'Commissioner of Police, Thane' though serving on deputation since 24.05.2019 in establishment of 'Additional Director General of Police Force-I; Maharashtra State, Mumbai' was nonetheless required to be diligently examined only in accordance with provisions of law and rules viz : (i) 'Section 7' of the 'Maharashtra SRPF Act: 1951' and (ii) 'Rule 68' and 'Rule 69' of the Maharashtra SRPF Rules: 1959; rather than by relying solely on guidelines in 'Home Department' Circular dated 12.05.2021.

16. The provisions of 'Rule 69' of 'Maharashtra SRPF Rules: 1959' states that *"Notwithstanding anything contained in Rule 68 above, the commandant may on compassionate ground allow such resignation or transfer"*. The provisions of 'Rule 69' of 'Maharashtra SRPF Rules:1959' therefore can be brought into implementation only by the 'Commandant' who has been so designated under 'Section 2' read with 'Section 5' of 'Maharashtra SRPF: Act: 1951'. Therefore, provisions of 'Rule 69' of 'Maharashtra SRPF Rules: 1959' empowers only the 'Commandant' with such vast discretion to consider 'Special Cases' of 'Inter Establishment Transfer' of 'Police Personnel' who are placed in situations of 'Personal Hardships' but upon assiduous evaluation of the cited 'Compassionate Grounds'. While exercising these discretionary powers under 'Rule 69' of 'Maharashtra SRPF Rules:1959', an appropriate test for the

‘Commandant’ would be to arrive at an unequivocal conclusion with an ‘Open Mind’ if ‘Compassionate Grounds’ cited by the ‘Police Personnel’ deeply appeals to his conscience. Notwithstanding; the absence of specific guidelines in ‘Home Department’ Circular dated 12.05.2021 read with ‘Home Department’ Circular dated 29.11.2022 about how such ‘Special Cases’ of ‘Inter Establishment Transfers’ are to be considered, these are certainly not to be implemented in such manner so as to supplant provisions of law and rules viz (i) ‘Section 7’ of ‘Maharashtra SRPF Act’ 1951 and (ii) ‘Rule 68’ and Rule 69’ of Maharashtra SRPF Rules:1959. The “Commandant” has the onerous responsibility of upholding provisions of law and rules and cannot be tied down by guidelines in ‘Home Department’ Circular dated 12.05.2021 read with Home Department Circular 29.11.2022.

17. The ‘Maharashtra SRPF Rules: 1959’ has made specific provision under ‘Rule 69’ only to ensure that immediate relief can be provided by the ‘Commandant’ as leader of his ‘Men in Uniform’, whenever ‘Special Cases’ are submitted for his consideration; such as that of Applicant whose ‘Wife’ is suffering from “Brain Cancer” at ‘Stage 3’. The provisions of law and rules viz (i) ‘Section 7’ of ‘Maharashtra SRPF Act 1951’ and (ii) ‘Rule 68’ and ‘Rule 69’ of ‘Maharashtra SRPF Rules: 1959’ for this very reason does not vest such expansive discretionary power of ‘Inter Establishment Transfers’ in ‘Special Cases’ with ‘Additional DG SRPF; Maharashtra State, Mumbai’ or even ‘DGP, Maharashtra State’. Hence, the ‘Commandant, SRPF; Group No.VIII’ at Goregaon, Mumbai under provisions of ‘Rule 69’ of ‘Maharashtra SRPF Rule: 1959’ to decide afresh as ‘Special Case’, about representations submitted by Applicant for ‘Inter Establishment Transfer’ to establishment of ‘Commissioner of Police; Thane’.

18. The ‘Commandant, SRPF; Group No.VIII’ at Goregaon Mumbai directed to diligently examine representations submitted by Applicant for consideration as ‘Special Case’ only upon his return from deputation in establishment of ‘Additional DG Force-1 Maharashtra State, Mumbai’. The

Applicant should be given 'Personal Hearing' so as to provide him with an opportunity to explain issues relating to 'Marital Dispute' which may be factual or otherwise as it has seriously undermined the due priority with which representations of Applicant were required to be considered given the grave 'Medical Condition' of his 'Wife'.

19. The 'Commandant SRPF Group VIII' at Goregaon Mumbai to exercise the powers under 'Rule 69' of 'Maharashtra SRPF Rules 1959' within 'Two Weeks' of return of Applicant from deputation in establishment of 'Additional Director General of Police, Force-1, Maharashtra State, Mumbai'. Further, if 'Special Case' of Applicant is not approved by 'Commandant SRPF Group VIII' under provisions of 'Rule 69' of 'Maharashtra SRPF Rules 1959'; by passing 'Reasoned Order' then in such an eventuality considering the grave 'Medical Condition' of his 'Wife', the 'Commandant SRPF : Group VIII' at Goregaon (E), Mumbai may if possible extend facilities under 'Rule 70' of 'Maharashtra SRPF Rules 1959' which will at least enable Applicant to live with his 'Wife' and 'Aged Mother' in 'Police Quarters' and help ease his 'Personal Hardships'.

20. Hence, the following order :-

ORDER

(A) Original Application is Partly Allowed.

(B) No Order as to Cost.

Sd/-

**(Debashish Chakrabarty)
Member(A)**

Place : Mumbai

Dictation taken by : V.S. Mane

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