

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1137 OF 2016

DISTRICT : MUMBAI

Shri Kishor Babanrao Jagtap.)
Age : 53 Yrs, Working as Incharge Police)
Inspector, Uran Traffic Branch, Navi)
Mumbai Police Commissionerate, and)
Residing at 1/32, Police Officers Quarters)
Carter Road, Bandra (W), Mumbai 50.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Addl. Chief Secretary,)
Home Department,)
Mantralaya, Mumbai - 400 032.)
2. The Director General and Inspector)
General of Police, Having Office at)
Old Council Hall, Shahid Bhagatsing)
Marg, Mumbai 400 039.)
3. The Commissioner of Police.)
Navi Mumbai, having office at)
Navi Mumbai.)
4. Shri Milind R. Hiwale.)
Working as Police Inspector,)
Traffic Branch (Admn.) Navi Mumbai)
Police Commissionerate, Navi Mumbai.)...**Respondents**



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

Mr. N.K. Rajpurohit, Chief Presenting Officer for Respondents 1 to 3.

Mr. Qureshi, learned Advocate holding for Mr. Mateen Shaikh, Advocate for Respondent No.4.

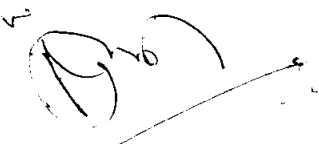
P.C. : R.B. MALIK (MEMBER-JUDICIAL)

DATE : 05.05.2017

JUDGMENT

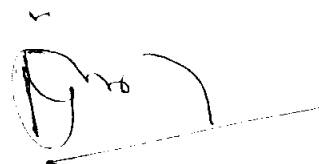
1. This Original Application (OA) is made time bound by the Hon'ble High Court in **Writ Petition No.958/2017 (Shri Milind R. Hiwale Vs. State of Maharashtra and others, dated 29th March, 2017)**. It relates to a dispute with regard to the transfer of the Applicant, a Police Inspector In-charge of Uran Traffic Branch under Navi Mumbai Police Commissionerate. The contender to that post, who was notified as his successor is the 4th Respondent. The Respondent No.1 is the State of Maharashtra in Home Department, the Respondent No.2 is the Director General and Inspector General and the 3rd Respondent is the Commissioner of Police, Navi Mumbai.

2. I have perused the record and proceedings and heard Mr. A.V. Bandiwadekar, the learned Advocate for the



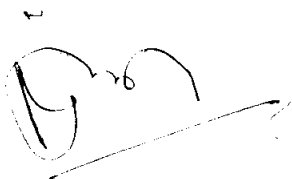
Applicant and Mr. N.K. Rajpurohit, the learned Chief Presenting Officer for the Respondents.

3. The Applicant came to be transferred to Uran Traffic Branch vide the order of 30th May, 2014 and he joined that post on 31.5.2014. The Applicant claims to have done outstanding work and in this behalf, in all fairness to him, it needs to be noted that vide Exh. 'C' Page 26 of the Paper Book (PB) dated 4.5.2016 in a D.O. letter, the Deputy Commissioner of Police (Traffic), Navi Mumbai commended his good performance and in fact, in the Affidavit-in-reply filed on behalf of the 3rd Respondent by Mr. Kiran V. Patil, Assistant Commissioner of Police, Navi Mumbai, in Paras 11 and 12 has accepted that the Commissioner of Police recorded the dissatisfaction about the performance of Uran Nhava Sheva Traffic Division, but it was clarified that, it was merely routine that in rainy season, the road conditions become worse and, "it does not mean that Officer In-charge is inefficient in work". In Para 12 of the said Affidavit-in-reply, it is again emphasized that the work of the Applicant was appreciated even while transferring him, "there is no bad work or dis-satisfaction towards working is shown about the Applicant". In Para 14, it is clarified that the Applicant was not transferred on the ground of dereliction of duty.




4. It is not necessary for me to set out in great detail, the facts and it would be suffice to mention that the record does show that, in not too distant past, the Applicant came to be transferred more than once and every time, the 4th Respondent was his successor. For a particular duration of time, when higher-ups conveyed displeasure, it appears that the 4th Respondent was working on that post. I, however, make it very clear that, going by the recitals in the Affidavit-in-reply above referred to, neither the Applicant nor the 4th Respondent can be assailed of dereliction of duty or in any manner, a stigmatic performance. The contents of the Affidavit-in-reply above referred to, are on sworn Affidavit and they are binding as undertakings on all the Respondents including the Respondent No.3.

5. The record would show that the Applicant brought 2 OAs being OA Nos.621/2016 and 622/2016 (Shri Kishor B. Jagtap Vs. State of Maharashtra and 3 others). The Hon'ble Vice-Chairman by a common order of 10.8.2016 held that the Applicant's transfer deploying him to Special Branch, Navi Mumbai Police Commissionerate from Traffic Branch as well as another order of transfer from Navi Mumbai Police Commissionerate to Gadchiroli fell foul of the provisions of Section 22-N of the



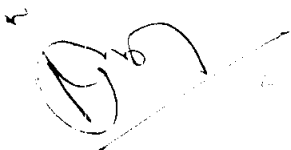
Maharashtra Police Act, 1951. In fact, the observations, generally and more particularly, in Para 15 of that common order would make it very clear that, regard being had to the age of the Applicant and his health condition, it was directed that he be not posted to place like Gadchiroli. Before concluding, however, it was clarified that the said order would not come in the way of PEB-2, if the Applicant was to be considered for mid-term transfer in accordance with Section 22-N (2) of the Police Act. That would mean that, for all practical purposes, it would be the transfer by the DGP and not by the Commissioner of Police. That I think, should be the import of PEB-2.

6. Now, thereafter, the order herein impugned was made which is at Exh. 'A' collectively (Pages 22 and thereafter). Vide Paragraph 4862, the 4th Respondent was, on administrative ground posted at Uran (Traffic) vide 4868, the Applicant was transferred from Uran (Traffic) to Police Station Rabale. This order of transfer has been challenged by way hereof. On 6.12.2016, this Tribunal presided over by the Hon'ble Vice-Chairman found that such transfers in obtaining set of circumstances could be made only in exceptional circumstances. The events preceding the impugned order were discussed in Para 3. In Para 6, it was observed that, prima-facie, the impugned



order was in violation of Section 22-N(2) of the Police Act. There was a reference to the common order in the 2 OAs which is discussed above and considering those facts, the impugned order was stayed. It appears, however, that for a little more than one month, that order was not complied with and thereafter, MA No.1/2017 in that OA was moved by the State. It was observed by the Hon'ble Vice-Chairman that a detailed interim order was passed after hearing all the sides and the past history would show that the Applicant was being repeatedly transferred. It was again reiterated that the said transfer order was in violation of the provisions of Police Act. It was recorded with a tinge of disapproval that instead of effectuating an interim order and filing Affidavit-in-reply, they had decided to file the MA effectively for absolving them from the said implementation. No justifiable reason was found therein. It was on the other hand found that for expeditious disposal, the 3rd Respondent ought to have filed the Affidavit-in-reply. The MA was, therefore, rejected.

7. In Para 4, it was recorded that the interim order of 6.12.2016 had not been implemented despite a lapse of about one month and, therefore, *suo-motu* cognizance was taken and Contempt Notice was issued. It is common

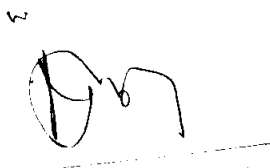


ground that, ultimately, the Applicant was allowed to join on 26.1.2017.

8. The 4th Respondent preferred a Writ Petition No.958/2017 which has been referred to hereinabove. It appears therefrom that, even the State had challenged the same order earlier, but the Writ Petition was withdrawn.

9. In Para 2 of the order dated 6.12.2016, it was observed by this Tribunal that the Applicant had admittedly completed two years tenure at the Traffic Branch at Uran. Now, as far as this OA is concerned, the relief claimed as a result of the unamended as well as the amended OA is to set aside the impugned orders of transfer and for extension of tenure by about 5 months and 21 days which was the period for which the Applicant was kept away from his post at Uran (Traffic).

10. Now, for all practical purposes, it can safely be mentioned that the OA has worked itself out. I do not think, that a meticulous mechanical exercise should be undertaken about months and days because after-all, even at the time, the interim orders were made, the Applicant had completed his tenure of two years. Therefore, now, if the Applicant is to be transferred, then in my opinion,

A handwritten signature in black ink, appearing to be 'G.M.', is written over a horizontal line.

nothing can be done within the scope of this OA. The observations of the Hon'ble Vice-Chairman in the common order in OA 621 and 622/2016 will have to be borne in mind by the authorities. Mr. Bandiwadekar contended that, I should also give a direction that the 4th Respondent should not be posted at Uran in any case, whoever else may be posted. He was considerably agitated by the fact that, even for small matters, the Applicant was compelled to rush to this Tribunal, and therefore, heavy cost should be awarded. In my opinion, the scope of jurisdiction of this Tribunal is such that I cannot either directly or indirectly monitor the issue of transfer of the Police personnel and in this case, the Applicant. I express no opinion on the submission of Mr. Bandiwadekar. It is only recorded that on Respondents' own showing, there is no adversity as far as the Applicant is concerned about his meritorious performance and beyond that, I would like to say anything more. With this, the Original Application is disposed of with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
05.05.2017

05-05-17

Mumbai

Date : 05.05.2017

Dictation taken by :

S.K. Wamanse.

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