

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.340 OF 2019

(Subject : Posting)

DISTRICT : PUNE

Smt. Namrata Ganesh Patil,)
Occ. Deputy Commissioner of Police at Zone-2,)
Pimpri Chinchwad, R/at J-702, Queenstown,)
Chinchwad, Pune.) **... Applicant**

Versus

1. The State of Maharashtra,)
Through the Additional Chief Secretary,)
Home Department,)
Mantralaya, Mumbai 32.)

2. The Director General of Police,)
Shahid Bhagat Singh Marg, Colaba, Mumbai.)

3. The Commissioner of Police,)
Pimpri Chinchwad Police Commissionerate,)
Premlok Park, Chinchwad Akrudi Road,)
Pimpri Chinchwad, Pune 19)

4. Mr. Vinayak Shahadev Dhakane,)
Deputy Commissioner of Police,)
Head Quarter, Pimpri Chinchwad,)
Police Commissionerate, Premlok Park,)
Chinchwad Akrudi Road, Pimpri Chinchwad,)
Pune 19) **... Respondents**

Shri K.R. Jagdale, Advocate for the Applicant.

Ms. S.P. Manchekar, Chief Presenting Officer for the Respondents

No.1 to 3.

Respondent No.4 is absent.

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

DATE : **15.07.2019**

J U D G M E N T

1. The challenge is to the impugned order dated 11.03.2019, whereby the Respondent No.3, Commissioner of Police, Pimpri Chinchwad, Pune has withdrawn some of the functions and powers of the Applicant and assigned the same to Respondent No.4.

2. Shortly stated facts giving rise to the Original Application can be stated as under :-

The Applicant was posted as Deputy Commissioner of Police, Zone 2, Pimpri Chinchwad, by order dated 04.08.2018. However, abruptly Respondent No.3, Commissioner of Police, Pimpri Chinchwad, transferred her from Deputy Commissioner of Police (DCP) Zone 2 to Police Headquarter, Pimpri Chinchwad. The Applicant has challenged the said order of transfer in O.A.No.12 of 2019 contending that it is in violation of provisions of the Maharashtra Police Act, Rules 1951. The Tribunal allowed the O.A.No.12 of 2019 by order dated 06.02.2019 and directions were given to Respondent No.3 to repost the Applicant as DCP Zone 2, Pimpri Chinchwad within two weeks from the date of order.

3. In pursuance of the order passed by the Tribunal the Applicant was reposted on her earlier post w.e.f. 02.03.2019. However, again the Respondent No.3 by impugned order dated 11.03.2019, arbitrarily

withdrew some of the functions and powers of the Applicant about supervision and monitoring the detection of crime and assigned it to Respondent No.4 who is working as DCP at Headquarters, Pimpri Chinchwad. The Applicant has assailed the order dated 11.03.2019 by which the Applicant has been divested of her powers to act as DCP and assigned the same to Respondent No.4. The Applicant contends that Respondent No.3 got annoyed because of her challenge to earlier transfer order dated 31.12.2018 in which she succeeded. Respondent No.3 did not like it and therefore he was seriously prejudiced and bias against the Applicant. Therefore again by order dated 11.03.2019 she was divested of her functions and powers as DCP and the same were assigned to Respondent No.4. The Applicant contends that this action of the Respondent No.3 is nothing but an attempt to circumvent the order passed by this Tribunal in O.A.No.12 of 2019 and suffers from arbitrariness and malice. The Applicant, therefore, made representations to the Respondent No.3 as well as to the Director General of Police, to restore her position but in vain. She, therefore, prayed to set aside the order dated 11.03.2019.

4. Respondent No.3 resisted the application by filing the affidavit-in-reply *inter alia* denying that the impugned order dated 11.03.2019 suffers from any arbitrariness of malice. It is not in dispute that earlier Respondent No.3 had transferred the Applicant by order dated 31.12.2018 without following the due process of law and therefore it was set aside by

order dated 06.02.2018 in O.A.No.12/2019. Respondent No.3 sought to justify the order dated 11.03.2019 contending that he had received various complaints about non performance and inefficiency of the Applicant to maintain the law and order in Zone 2. According to him, the Applicant failed to prevent commission of offence in her Zone. He, therefore, assigned some functions and powers pertaining to supervision and monitoring the crime investigation and detection of Zone 2 to Respondent No.4, exercising supervisory powers as Commissioner of Police. It is not that the Applicant has been divested of her post as DCP Zone, but some functions and powers are only assigned to Respondent No.4 exercising the powers of Commissioner of Police under Section 36 of Criminal Procedure Code read with Section 10 of Maharashtra Police Act, Rules 1951. With these pleadings the Respondent No.3 prayed to dismiss the O.A.

5. Shri K.R. Jagdale, learned Advocate for the Applicant vehemently urged that the impugned order dated 11.03.2019 is nothing but fall out of earlier litigation of O.A.No.12/2019 and only to circumvent the order passed by this Tribunal in O.A.No.12/2019 the impugned order dated 11.03.2019 has been issued due to vengeance, bias and malice. He urged that for order dated 11.03.2019 has effect of divesting of important powers and functions of the Applicant as DCP Zone 2, Pimpri Chinchwad. He urged that as the Applicant succeeded in O.A.No.12/2019, Respondent No.3 got annoyed and subjected the Applicant to humiliation by order

dated 11.03.2019 and divested her of her important powers and functions illegally. On this line of submission he prayed to set aside the impugned order.

6. Par contra, learned C.P.O. urged that each and every administrative action cannot be questioned in the Tribunal and Respondent No.3 being Commissioner of Police, in exercise of the powers under Section 36 of Criminal Procedure Code and Section 10 of Maharashtra Police Act, Rules 1951 can pass such orders for better policing from the point of administrative exigencies. She, further, contends that the Applicant was found inefficient while functioning as DCP Zone 2 and therefore some of her functions and powers were withdrawn and assigned to Respondent No.4. She therefore, submits that impugned order cannot be faulted with.

7. In view of the submission advanced at par and the facts and circumstances in the case, the question posed is whether the impugned order dated 11.03.2019 is mere innocuous administrative order or suffers from arbitrariness, unfairness or malice. Needless to mention that in order to challenge the administrative action before the Tribunal the Applicant needs to establish that executive decision/ administrative decision is contrary to mandatory provisions of law or violation of fundamental rights including being in violation of guarantee of fairness. Suffice to say judicial review of administrative action is permissible when action suffers from vice of arbitrariness, unfairness, unreasonable or malice.

8. Turning to the facts of the present case, one needs to see the context and background of the matter. Admittedly, earlier Respondent No.3 without consultation of PEB had abruptly transferred the Applicant from DCP Zone to Headquarters, Pimpri Chinchwad by order dated 31.12.2018. Important to note that the said transfer order was sought to be justified on the ground of inefficiency of the Applicant to maintain law and order situation in her jurisdiction i.e. Zone 2. However, the transfer order dated 31.12.2018 was quashed and set aside by this Tribunal in O.A.No.12/2019 by order dated 06.02.2019 which has attained finality. The Applicant was, therefore, given reposting on the post of DCP, Zone-1 on 02.03.2019. The date of reposting 02.03.2019 is material as only after 10 days the Respondent No.3 ventured to pass the impugned order dated 11.03.2019. As such the Applicant had hardly worked for 10 days and again she was subjected to ordeal of humiliation, as important powers and functions relating to her post were withdrawn and entrusted to Respondent No.4. Here material to note that Respondent No.4 is the same person who was posted in place of the Applicant by earlier transfer order dated 31.12.2018 which was set aside by this Tribunal. Be that as it may, the question is whether Respondent No.3 can divest the powers and functions of the Applicant and the same can be assigned to Respondent No.4 without effecting transfers in accordance to law.

9. Here it would be apposite to refer to impugned order dated 11.03.2019 which is as follows :-

“परिमंडळ-२ चे हद्दीमध्ये संवेदनशील गुन्ह्यांचे प्रमाणामध्ये वाढ झाल्याचे दिसून येत आहे. तसेच महत्वाचे संवेदनशील गुन्हे अद्यापपर्यंत उघडकीस आलेले नाहीत. तसेच परिमंडळ-२ मधील प्रलंबी अर्ज प्राधान्याने निकाली काढणे आवश्यक आहे. त्याकरिता सदरचे गुन्हे लवकरात लवकर उघडकीस येणेचे दृष्टीकोनातून, तसेच यापुढे दाखल होणा-या गुन्ह्यांवर परिणामकारक पर्यवेक्षण होण्याच्या दृष्टीकोनातून व त्याचबरोबर आगामी काळात होणा-या लोकसभा व विधानसभेच्या सार्वजनिक निवडणूका पाहता पुढील आदेश होईपर्यंत खालील कामकाज देण्यात येत आहे.

श्रीमती नम्रता पाटील पोलीस उप-आयुक्त परिमंडळ-२, पिंपरी-चिंचवड या परिमंडळ-२ चे कामकाज पाहून पुढील आदेशापर्यंत खालील प्रमाणे पथक गठीत करून परिमंडळ-२ मधील निवडणूक कामकाजाबरोबर हद्दीतील कायदा व सुव्यवस्था पाहून सोबत जोडलेल्या तक्त्याप्रमाणे गुन्हे उघडकीस आणणे करिता पाठपुरावा करतील तसेच सदर गुन्ह्यांचा प्रगती अहवाल आम्हास सातत्याने सादर करतील. त्याचबरोबर सोबत जोडलेल्या तक्त्यामध्ये नमुद केलेले प्रलंबित अर्जांची स्वतः चौकशी करून अखेर अहवाल आम्हास सादर करतील.

१) तपास पथक :-

अं.नं.	अधिकारी / कर्मचारी नाव	नेमणुक	उप-आयुक्त परी-
१	श्रीमती नम्रता पाटील	पेलीस उप-आयुक्त परि-२	12/3/2019
२	मपोउपनि एस.डब्यु वाघमारे	निगडी पोलीस स्टेशन	1937
३	पो.हवा. १६६२ साळवे	तळेगाव एमआयडीसी पो.स्टे.	
४	पो.कां. २२६६ भरेकर	नियंजण कक्ष	
५	म.पो.कां. २१९४ ए.ए. कांबळे	देहूरेड पो.स्टे.	

श्री. विनायक ढाकणे पोलीस उप-आयुक्त मुख्यालय, पिंपरी-चिंचवड हे पोलीस उप-आयुक्त मुख्यालय चे कामकाज पाहूनपुढील आदेशापर्यंत परिमंडळ-२ हद्दीतील यापुढी दाखल होणारे गुन्ह्यांचे अनुषंगाने पर्यवेक्षण व मार्गदर्शन करतील तसेच परिमंडळ-१ व परिमंडळ-२ मधील पोलीस स्टेशनचे टीमचे नियोजन पाहतील. त्याचबरोबर परिमंडळ-२ मधील गुन्हे नियंजणात आणणेकामी प्रतिबंधक कारवाई करतील (मु.पो.का.क.५५.५६.५७. एमपीडीए, मोक्का इ.) तसेच परिमंडळ-२ हद्दीतील महत्वाचे गुन्ह्यांचे तपासाचे अनुषंगाने सीडीआर/ एसडीआर करिता नोडल अधिकारी म्हणून काम पाहतील.”

10. Thus, increase in crime rate and non detection of crime seems to be ostensible reason to divest the functions and powers of the Applicant and to assign to Respondent No.4. However, significant to note that Respondents have not placed on record any material or data to substantiate that there is increase in crimes and detection of crime is less in Zone 2 headed by the Applicant. On the contrary, the Applicant in her representation dated 12.03.2019 (copy whereof is at page 52 of the paper book) has given chart showing number of serious crimes registered and detected within preceding three months pertaining to Zone 2 headed by the Applicant as well as Zone 1. Perusal of chart reveals that there is no

much material difference in crime rate of Zone 1 and Zone 2. As such in absence of any cogent material it cannot be said that there is increase in crime in Zone 2 and it was related to alleged inefficiency or incompetency of the Applicant to curb or prevent the same.

11. As stated above, the Applicant had hardly worked for 10 days on the post of DCP of Zone 2 after her reinstatement by order dated 06.02.2019. The period of 10 days can hardly be said sufficient to judge the efficiency or competency of the Applicant much less to cast aspersions on her performance. Respondent No.3 ought to have produced the record to substantiate his contention that there was increase in crime and the Applicant had failed to perform her functions efficiently. However, no such material is produced which give raise to adverse inference.

12. Learned C.P.O. referred to Section 36 of CrPC and Section 10 of Maharashtra Police Act, Rules 1951 which reads as follows :

“36. Powers of superior officers of police – Police officers superior in rank to an officer in charge of a police station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station.”

“10. Deputies to Commissioner

(1) The State Government may appoint one or more Deputy Commissioners of Police in Greater Bombay or in any area in which a Commissioner has been appointed under clause (a) of section 7.

(2) Every such Deputy Commissioner shall, under the orders of the Commissioner, exercise and perform any of the powers, functions and duties of the Commissioner to be

exercised or performed by him under the provisions of this Act or any other law for the time being in force.

Provided that the powers to be exercised by the Commissioner of making, altering or rescinding rules under section 33 shall not be exercisable by a Deputy Commissioner."

13. There is no dispute about the powers to be exercised by Commissioner of Police as envisaged in the above provisions. However, the above provisions cannot be construed to empower the Commissioner of Police to diverse the DCP to his/her functions or powers which he /she is required to perform within his/her local jurisdiction. In present case, the impugned order needs to be examined on the background of earlier litigation in O.A.No.12/2019. The order of transfer issued by Respondent No.3 was set aside by this Tribunal and the Applicant was directed to be reposted. In such situation, if the impugned order is allowed to stand then it has practical effect of circumventing the order passed by this Tribunal in O.A.No.12/2019 and nothing else. Suffice to say that what could not be done directly now attempted to be done indirectly by passing such orders of divesting of administrative powers and functions of the Applicant. If this is allowed to be done, there would be no rule of law. Rather this is a method innovated to defy the orders of Tribunal under the pretext of division of work.

14. As such the reason put forth by the Respondent No.3 that because of inefficiency of the Applicant and increase in the crime rate the impugned order was necessitated, does not get support from the record. In fact the situation of law and order and the crime rate in Zone 1 and

Zone 2 is similar. Even assuming for a moment, that the Applicant was inept in handling the crimes appropriate course of action was to refer the matter to the Director General of Police for appropriate legal action. However, instead of taking appropriate legal action, Respondent No.3 divested the Applicant of her powers and duties, and assigned the same to Respondent No.4 which is nothing but impermissible interference in the jurisdiction of the Applicant. By such order, the Applicant is left virtually without powers which she is required to perform in law. In fact such orders can cause confusion in the administration and ultimately it may effect over all policing of the Department. It is thus quite clear that the impugned order has been passed only to circumvent the order passed by this Tribunal in O.A.No.12/2019 and nothing else. It suffers from arbitrariness and malice. Respondent No.3 seems nurtured bias against Applicant because of challenging earlier transfer order issued by him. As such the impugned order is nothing but an attempt to stall the effect implementation of the order passed by this Tribunal under the garb of administrative ground and division of work. There is nothing on record to show that any point of time the Applicant was reprimanded or show cause notice was issued to her about alleged incompetency of inefficiency. This being the position only and only inference is that the impugned order is not innocuous administrative order but it has trapping of divesting the Applicant of her lawful duties, powers and functions out of bias and prejudice.

15. The totality of the aforesaid discussion leads me to sum up that the impugned order is not sustainable in law and deserves to be quashed and set aside. Hence, following order :-

ORDER

- (a) Original Application is allowed.
- (b) Impugned order dated 11.03.2019 is hereby quashed and set aside.
- (c) The powers and functions withdrawn by order dated 11.03.2019 be restored within a week.
- (d) No order as to costs.

Sd/-

(A.P. Kurhekar)
Member(J)

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