

**THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

**ORIGINAL APPLICATION NO.544 OF 2016
(Sub : Transfer)**

DISTRICT : PUNE

Shri Dhondiram Vithoba Chowgule,)
Residing at 1-7, Shriram Sahaniwas Housing)
Society, Katraj, Pune 411 043)

..APPLICANT

VERSUS

Additional Commissioner of Police,)
Pune City, Police Commissionerate,)
Pune 411 001)

....RESPONDENT

Shri C.T. Chandratre, learned Counsel for the Applicant.

Smt. K.S. Gaiwkad, learned Presenting Officer for the Respondent.

CORAM : SHRI RAJIV AGARWAL, VICE-CHAIRMAN

DATE : 10.10.2016.

J U D G M E N T

1. Heard Shri C.T. Chandratre, learned Counsel for the Applicant and Smt. K.S. Gaiwkad, learned Presenting Officer for the Respondent.

2. This Original Application has been filed by the Applicant challenging order dated 26.05.2016 transferring the Applicant from Bharati Vidyapeeth Police Station, Pune to Head Quarters (Court Campus), Shivaji nagar, Pune.

3. Learned Counsel for the Applicant argued that the Applicant was posted to Bharati Vidyapeeth Police Station by order dated 31.05.2014. As per Section 22N(1)(b) of the Maharashtra Police Act (M.P.A.), a Police Constable is entitled to remain posted to a Police Station for 5 years. However, the Applicant has been transferred before he has completed his tenure by impugned order dated 26.05.2016. Learned Counsel for the Applicant argued that the Applicant has been transferred on administrative ground. However, a Police Personnel cannot be transferred only on administrative ground before completion of his tenure unless there are some exceptional reasons for such a transfer. As the impugned order does not disclose any such reasons, the order is bad in law. Learned Counsel for the applicant argued that the Respondent has claimed in the affidavit-in-reply that the Applicant used in unparliamentary language with female colleagues and was asking bribes from public. However, the report of the Police Inspector, Bharati Vidyapeeth Police Station is dated 09.10.2015. The report of the Assistant Commissioner, Swargate is dated 14.12.2015 and the Deputy Commissioner, Zone is dated 25.01.2016 which are quite old. No action was taken on these reports. If the charges against the Applicant were so serious, action should have been taken

against him. However, no action has been taken against him and he has merely been transferred. Learned Counsel for the Applicant argued that the impugned transfer order is unsustainable, as it does not comply with the provisions of Section 22(N) of the Maharashtra Police Act.

4. Learned Presenting Officer (P.O.) argued on behalf of the Respondent that the Police Establishment Board at Commissionarate Level has considered the transfer of the Applicant in its meeting held in May, 2016 in view of default report against him. As he was found indulging in undesirable activities, he was transferred before completion of his tenure by the impugned order in full compliance with the provision of Section 22(N)(2) of Maharashtra Police Act.

5. I find that the Respondent has filed two affidavits on 18.07.2016 on 29.08.2016. By interim order dated 14.06.2016, this Tribunal has stayed the transfer of the Applicant. The Respondent was asked to clarify whether the office record contains any mention that any disciplinary action is 'contemplated' against the Applicant. Learned P.O. had stated that the record does not depict any disciplinary proceedings are contemplated against the Applicant. In the affidavits dated 18.07.2016 and 29.08.2016 also, there is not a word that any disciplinary proceedings are contemplated against the Applicant. In para 7 of the affidavit-in-reply dated 18.07.2016, the following is stated :-

“There are serious allegations against Applicant, like illicit and unparliamentary language with female Policemen, asking for bribe from Public, indiscipline and arrogant behavior on duty.”

If there are very serious allegations against a Government servant they normally would invite disciplinary proceedings against him. However, the affidavit does not state any such thing. In the affidavit dated 29.08.2016, a report of Senior Police Inspector, Bund Garden Police Station, Pune against the Applicant is enclosed which was submitted on 27.11.2015. The concluding portion of the report is, reproduced below :-

“अशारितीने कसुरदार पोलीस हवालदार १४१९, डी.व्ही.चौगुले, नेमणूक भारती विद्यापीठ पो.स्टे. पुणे यांनी कर्तव्यार्थ, शिस्तप्रिस पोलीस खात्यास न शोभेल असे अश्लील व असभ्य, उर्मट व उध्दटपणाचे, बेशिस्त व बेजबाबदारपणाचे कृत्य केले आहे. त्यांचे या वर्तनास वेळीच पायबंद न घातल्यास भविष्यात एखदी अप्रिय घटना घडून, त्याद्वारे जनमाणसातील पोलीसांची प्रतिमा मलिन होणार असल्याने, कसुरदार यांचे विरुद्ध कठोर कारवाई होणेकामी, अहवाल सादर करीत आहे.”

However, though the recommendation was for stringent action (कठोर कारवाई) against the Applicant, no action seems to have been taken. The Respondent has merely transferred the Applicant from the Bharati Vidyapeeth Police Station. From both the affidavits, it is not clear whether the default reports, including aforesaid report dated 27.11.2015 was placed before the Police Establishment Board. The impugned order dated 26.05.2016 reads :-

“महाराष्ट्र पोलीस अधिनियम, १९५१ च्या कलम २२(न)(१) व २२(न)(२) च्या तरतुदीनुसार, पुणे पोलीस आयुक्तालयातील पोलीस आस्थापना मंडळाच्या मान्यतेने पुणे शहर पोलीस आयुक्तालयाचे आस्थापनेवरील पोलीस कर्मचारी वर्गातील शपोलीस हवालदार या संवर्गातील खालील पोलीस कर्मचा-यांच्या, त्यांच्या नांवासमोर दर्शविलेल्या ठिकाणी प्रशासकीय कारणास्तव बदल्या करण्यांत येत आहेत.”

From this, it is clear that the Police Establishment Board has not considered the default reports against the Applicant, when it decided to order his mid-tenure transfer. Mid-term transfer under M.P.A., which cover mid-tenure transfer also, can be ordered under Section 22(N)(2) of M.P.A. Such transfer can be ordered in exceptional cases, in public interest and on account of administrative exigencies. However, in the present case the Respondent has not produced any material nor claimed that the default reports against the Applicant were placed before the Establishment Board. In fact, even the date of the meeting of Establishment Board is also not mentioned. Under Section 22(N)(1)(a), a Police Personnel can be transferred before completion of his tenure if a disciplinary proceedings are instituted or contemplated against him. However, during the hearing on 14.06.2016, it was clearly admitted by the Respondent that no departmental proceedings are contemplated against the Applicant. For some unexplained reasons, the Respondent is not ready to start departmental proceedings against the Applicant. However, it is insisted that there are serious allegations against the Applicant and therefore, he is transferred. This is unacceptable. In such cases, were

preliminary enquiry has found prima facie evidence of serious misconduct, mere transfer will be stigmatic and not in conformity with Section 22(N)(2) of the M.P.A. unless departmental proceedings are instituted against the concerned Police Personnel. Here, such proceedings admittedly not even contemplated.

6. Having regard to the aforesaid facts and circumstances of the case, the impugned order dated 26.05.2016 qua the Applicant is quashed and set aside. As the Applicant was granted interim relief by order dated 14.06.2016, that order merges with this order. There will be no order as to costs.

Sd/-
(RAJIV AGARWAL)
VICE-CHAIRMAN

Place : Mumbai
Date : 10.10.2016
Typed by : PRK