

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.635 OF 2020

Shri Vishwajit Vasant Khule)
Age 50 years, Working as Police Inspector,)
R/at B-503, Eisha Footprint, near Indira)
School, Tathawade, Pune.).... **Applicant**

Versus

- 1) The State of Maharashtra,)
Through Additional Chief Secretary,)
Home Department, Mantralaya,)
Mumbai 400 032.)
- 2) Director General of Police, M.S.)
Mumbai, Maharashtra Police H.Q.)
Shahid Bhagat Singh Marg, Colaba)
Mumbai 400 001.)
- 3) The Commissioner of Police, Pimpri)
Chinchwad Police Commissionerate)
Premlok Park, Chinchwad, Pimpri-)
Chinchwad, Pune 411 033.) **..Respondents**

Smt. Punam Mahajan, learned Advocate for the Applicant.

Smt. Archana B.K., learned Presenting Officer for the Respondents.

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

DATE : 01.10.2021

JUDGMENT

1. The Applicant who is serving in the cadre of Police Inspector has challenged the transfer order dated 29.10.2020 whereby he is transferred from Police Commissionerate, Pimpri Chinchwad to Nasik city invoking Section 19 of the Administrative Tribunal Act, 1985.

2. Shortly stated facts giving rise to the O.A. are as follows:-

The Applicant is serving as Police in the cadre of Police Inspector. He was appointed as Police Sub Inspector and promoted as Police Inspector. He was in Pune City on the establishment of Commissioner of Police from 07.03.2014 to 14.08.2018. In 2018, Pimpri-Chinchwad Police Commissionerate was created as of separate police commissionerate and the Applicant was transferred and posted in crime branch on the establishment of Pimpri-Chinchwad, Police Commissionerate by order dated 14.08.2018. He claims to be entitled for six years tenure in Pimpri-Chinchwad Police Commissionerate in terms of Section 22N(1)(d) of Maharashtra Police Act. However abruptly by impugned transfer order dated 29.10.2020, the Respondent No.2 - Director General of Police transferred him from Pimpri -Chinchwad to Nashik treating him due for general transfer.

3. Learned Counsel for the Applicant has challenged the transfer order dated 29.10.2020 on the following grounds:-

(A) In the year 2020, due to covid-19 pandemic situation, general transfers which were due in April-May, 2020 were extended only upto 15.10.2020 but in the present case, the Applicant is transferred by order dated 29.10.2020 and on this ground alone the transfer order is unsustainable in law.

(B) The Applicant was posted on the establishment of Pimpri-Chinchwad Police Commissionerate by order dated 14.08.2018, and therefore, he was entitled to six years tenure afresh independently in Pimpri-Chinchwad Police Commissionerate in terms of Section 22N(1)(d) of Maharashtra Police Act but he is transferred mid-tenure without making out the case of premature/mid-tenure transfer as contemplated under Section 22N(2) of Maharashtra Police Act.

4. Per contra, Smt. Archana B.K., learned Presenting Officer in reference to reply filed by Respondent No.2 sought to contend that the deadline for issuance of general transfers in 2010 were extended up to 30.10.2020 by issuance of G.R. dated 30.09.2020, and therefore, impugned transfer order being issued before the deadline cannot be questioned. Secondly, Pune Pimpri-Chinchwad Police Commissionerate was created in 2018 which was earlier part of Pune Commissionerate, and therefore, the Applicant's tenure spent in Pune Commissionerate area was required to be clubbed with the tenure of Pimpri-Chinchwad Police Chinchwad Police Commissionerate in terms of Circular dated 16.03.2020 issued by Director General of Police which *inter-alia* provides for clubbing of two tenures for transfer.

5. In view of submission advanced at a bar, the question posed for consideration is whether the Applicant's transfer order dated 29.10.2020 would be construed as a mid-tenure transfer.

6. It is well settled that transfer is an incident of service and are made in exercise of administrative powers to meet the exigencies of service. However, now the transfers of Police Personnel are governed and regulated by the provisions of Maharashtra Police Act. Unless the transfers are in contravention of law or made with ulterior motives or in patent arbitrary exercise of powers, the Court would decline to interfere in such matter. Suffice to say, if the transfer is found in contravention of mandatory provisions of Maharashtra Police Act, then it needs to be struck down.

7. Indisputably, the Applicant being in the cadre of P.I. was entitled for normal tenure of six years as provided under Section 22N(1)(d) of Maharashtra Police Act, which *inter-alia* provides for fix tenure of Police Personnel, in view of the amendment brought into statute in view of decision of Hon'ble Supreme Court in ***Prakash Singh and others Vs. Union of India and others (2006) 8 SCC 1.***

Suffice to say, the law prescribes for normal tenure of Police Personnel of various cadres. However, Section 22 N(2) empowers the competent authority to transfer Police Personnel mid-term in public interest and on account of administrative exigencies in exceptional cases.

8. General Transfers and Mid-Term Transfers are defined in Section 2(6-A) and (6-B) of Maharashtra Police Act, which are as follows :-

“2(6-A) “General Transfer” means posting of a Police Personnel in the Police Force from one post, office or Department to another post, office or Department in the month of April and May of every year [after completion of normal tenure as mentioned in sub-section (1) of section 22N].

(6-B) “Mid-term Transfer” means transfer of a Police Personnel in the Police Force other than the General Transfer].”

9. Whereas Section 22N(1)(d) is reproduced as follows :

“22N. Normal tenure of Police Personnel, and Competent Authority [(1) Police Officers in the Police Force shall have a normal tenure as mentioned below, subject to the promotion or superannuation:-

(d) for Police Officers of the rank of Police Sub-Inspector, Assistant Police Inspector and Police Inspector a normal tenure shall be of six years at Commissionerate other than Mumbai, and eight years at Mumbai Commissionerate;

10. Thus, in terms of provisions of Maharashtra Police Act, general transfers are required to be effected once in a year i.e. in April or May. However, in 2020 due to covid-10 pandemic situation, general transfers could not be effected, and therefore, the Government by issuance of G.R. extended the deadline of general transfers.

11. Learned Counsel for the Applicant has tendered G.R. dated 30.09.2020 (page 48 of PB) which states extension of issuance of general transfers upto 15.10.2020. Whereas in reply, the Respondents sought to contend that by G.R. dated 30.09.2020, the deadline was extended upto 30.10.2020. However, no such G.R. dated 30.09.2020 extending time line upto 30.10.2020 is placed on record. Resultantly, as per material placed on record, the deadline for issuance of general transfer was upto 15.10.2020 only. Whereas, impugned transfer order has been issued on 29.10.2020 treating the transfer order as a general transfer order. Therefore, in absence of such G.R., the transfer order dated 29.10.2020 shall have to be construed as mid-term transfer order which necessitates the compliance of Section 22N(2) of Maharashtra Police Act which *inter-alia* empowers the competent authority to transfer the police personnel mid-tenure on administrative exigency or public interest. In the present case, admittedly no such provision was invoked and indeed, the Applicant was transferred as if, it is a case of general transfer which is also obviously incorrect. Suffice to say, the transfer order dated 29.10.2020 shall have to be treated mid-tenure transfer in the light of provisions of Act.

12. Apart, admittedly the Applicant was transferred on the establishment of Pimpri-Chinchwad Police Commissionerate by order dated 14.08.2018. Therefore, by virtue of Section 22N(1(d)), he was entitled to six years tenure in Pimpri-Chinchwad Police Commissionerate. True, before his posting and transfer to Pimpri-Chinchwad Police Commissionerate, the Applicant was in Pune Commissionerate from 2014. Therefore, the question would be whether his tenure in Pune Commissionerate could be clubbed with tenure with Pimpri-Chinchwad Police Commissionerate so as to term impugned transfer order as a general transfer order on the basis of circular issued by Director General of Police on 16.03.2020.

13. At this juncture, it would be apposite to see relevant paragraph from Circular dated 16.03.2020 which is at page No.35 of PB which is as follows:-

“अ) विहित कालावधी पूर्ण झालेले (Tenure Complete):-

- i.** दिनांक ३१/०९/२०२० पर्यंत किंवा त्यापूर्वी ज्या नि:शस्त्र पोलीस उपनिरीक्षक, नि:शस्त्र सहायक पोलीस निरीक्षक व नि:शस्त्र पोलीस निरीक्षकांनी सध्या कार्यरत असलेल्या घटकामध्ये विविध पदांवर (पोलीस उपनिरीक्षक, सहायक पोलीस निरीक्षक व पोलीस निरीक्षक) सलगपणे म्हणजे परिक्षेत्रात ०८ वर्षे, मुंबई आयुक्तालयात ०८ वर्षे व मुंबई व्यतिरिक्त इतर आयुक्तालयात ०६ वर्षे अशी सेवा / कर्तव्य बजावले आहे, असे बदलीपत्र नि:शस्त्र पोलीस उपनिरीक्षक, नि:शस्त्र सहायक पोलीस निरीक्षक व नि:शस्त्र पोलीस निरीक्षक (पिंपरी-चिंचवड पोलीस आयुक्तालयाची निर्माती पुणे शहर व पुणे ग्रामीण या घटकाच्या कार्यक्षेत्रांमधूनच झालेली असल्याने पिंपरी चिंचवड आयुक्तालयात जे पोउपनि, सपोनि व पोनि हे पुणे ग्रामीण /पुणे शहर घटकातून वर्ग झालेले आहेत, अशा पोउपनि, सपोनि व पोनि यांचा पुणे ग्रामीण /पुणे शहर घटकातील हजर दिनांक विचारात घेऊन पिंपरी चिंचवड आयुक्तालयातील कालावधीची गणना करण्यात यावी.”

14. Thus, it is on the basis of Circular dated 16.03.2020, the Respondent No.3 clubbed the tenure of Applicant spent in Pune Commissionerate with his tenure in Pune-Chinchwad Police Commissionerate which is obviously contrary to spirit and object of Maharashtra Police Act. There could be no such clubbing of tenures unless it is specifically provided under the provisions of Maharashtra Police Act when Act specifically provides for six years tenure in Police Commissionerate other than Mumbai Police Commissionerate where it is eight years tenure. Once the Pimpri-Chinchwad Police Commissionerate is created as a separate Police Commissionerate and came into existence in 2018, the tenure of police personnel appointed on the establishment of Pimpri-Chinchwad Police Commissionerate are entitled to prescribed tenure as provided in law. The Applicant being Police Inspector, in law, he is entitled to six years tenure in Pimpri-Chinchwad Police Commissionerate. Suffice to say, any such Circular which is in conflict with law cannot be allowed to prevail otherwise the very purpose and object of the provisions contained in Maharashtra Police Act would be defeated. The Circular cannot

override or supplant the statutory provisions, and therefore, clubbing of tenures to construe the impugned transfer as a general transfer order is totally unsustainable in law.

15. As such even assuming for a moment that by G.R. dated 13.09.2020, the deadline or issuance of general transfer was extended upto 30.10.2020 what was extended was the issuance of general transfer orders of a Government servant who were due for transfer in the month of April or May, 2020. In other words, time was only extended for issuance of general transfers of a Government servants who were due for transfers. This is the view taken by this Tribunal in **O.A.No.567/2020 (Shri Shridhar Pandurang Jadhav V/s State of Maharashtra & Ors, decided on 07.01.2021)** in the matter of transfer of Assistant Commissioner of Police, Pimpri-Chinchwad to Sub Division Police Officer, Akkalkua, Dist. Nandurbar. This judgment has been upheld by the Hon'ble High Court in **W.P. No.740/2021** by judgment dated 15.02.2021 as pointed out by learned Counsel for the Applicant.

16. Thus, even assuming for a moment that the deadline for issuance of general transfers were extended up to 30.10.2020 in that event also the Applicant being not due for transfer in general transfers of April or May, 2020 in absence of invocation of Section 22N(2) of Maharashtra Police Act, he could not have been transferred since the theory of clubbing tenure as propounded by Respondents is totally unpalatable and in contravention of provisions of Maharashtra Police Act.

17. The totality of the aforesaid discussion leads me to sum up that the impugned transfer order is not sustainable in law and the Original Application deserves to be allowed. Hence the following order:-

ORDER

- (A) Original Application is allowed.
- (B) Impugned transfer order dated 29.10.2020 is hereby quashed and set aside.
- (C) Interim relief granted by the Tribunal by order dated 03.11.2020 is made absolute.
- (D) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Place : Mumbai
Date : 01.10.2021
Dictation taken by : VSM
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