

**THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

**ORIGINAL APPLICATION NO.650 OF 2016
(Subject : Transfer)**

DISTRICT : PUNE

Mr. Dattatraya Rajaram Madane)
R/at. Irish Society, Magar Patta,)
Hadapsar, Pune.)

..APPLICANT

VERSUS

1. The State of Maharashtra,)
Through the Secretary,)
Home Department,)
Mantralaya, Mumbai.)
2. The Director General of Police,)
Shahid Bhagat Singh Marg,)
Colaba, Mumbai.)
3. The Commissioner of Police,)
Pune City, Pune.)

....RESPONDENTS

Shri K.R. Jagdale, learned Counsel for the Applicant.

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

CORAM : SHRI RAJIV AGARWAL, VICE-CHAIRMAN

DATE : 24.10.2016.

J U D G M E N T

1. Heard Shri K.R. Jagdale, learned Counsel for the Applicant and Smt. Archana B.K., learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant challenging his transfer from Pune to Nanded Range by order dated 13.01.2016.

3. Learned Counsel for the Applicant argued that the Applicant was transferred from Yavatmal to Pune on 07.11.2015 by the Director General of Police, who is the Respondent No.2 in this case. By order dated 18.11.2015, the Respondent No.2 cancelled the order dated 07.11.2015. The Applicant filed O.A.No.1014/2015 challenging the order dated 18.11.2015. The Respondent No.2 withdraw the transfer order dated 18.11.2015 by order dated 16.12.2015 and the O.A.No.1014/2015 was disposed of by this Tribunal on 17.12.2015. On 13.01.2016, the Applicant is again transferred from Pune to Nanded though the Applicant has not completed his tenure and the order is issued in a month other than April or May. Learned Counsel for the Applicant argued that such an order can be passed in compliance of provisions of Section 22N(2) of the Maharashtra Police Act (M.P.A.). However, the impugned order has been passed on the complaint of M.L.A. from Maval, District Pune. The Applicant has not completed his tenure of six years in Pune, Commissionerate. Learned Counsel for the Applicant

contended that the impugned order is bad in law and deserves to be quashed and set aside.

4. Learned Presenting Officer (P.O.) argued on behalf of the Respondents that the Applicant had served in Pune City from 2011 to 2014 as Police Sub Inspector. He was posted to Yavatmal for a year and he managed to be posted back to Pune in November, 2015 on his own request. M.L.A. of Maval Assembly constituency has written to the Respondent No.2 on 09.11.2015 that there are many complaints against the Applicant and his posting in Pune may cause resentment in public. The Commissioner of Police, Pune was asked to send a report on the compliant of M.L.A. by letter dated 21.01.2016. The Police Establishment Board met on 13.01.2016 and decided to transfer the Applicant to Nanded Range, and accordingly the order dated 13.01.2016 has been issued. Learned P.O. argued that the Applicant has been transferred in full compliance of provision of Section 22(N)(2) of the M.P.A.

5. It is admitted in the affidavit-in-reply dated 06.10.2016 passed by the Respondent No.2 that the Applicant was transferred on the request of M.L.A. of Maval. On careful perusal of Section 22N of M.P.A., I am unable to find any provision which permit transfer of a Police Personnel on mere compliant of an M.L.A. The compliant of M.L.A. dated 09.11.2015, does not disclose any misconduct on the part of the Applicant except vague allegation that such a posting may result in public resentment. The Respondent No.2 had

written on 21.01.2016 to the Commissioner of Police, Pune to enquire into the complaint of M.L.A. dated 09.11.2015. However, before any reply was received (in fact, before the complaint was sent for enquiry) Police Establishment Board No.2 met on 13.01.2016 and decided to transfer the Applicant to Nanded range. As it happens, the Applicant has placed a copy of report of Commissioner of Police, Pune dated 16.06.2016 regarding complaint of the M.L.A. and it is mentioned that no complaint against the Applicant is pending at present. This clearly shows that the P.E.B. No.2 has hastily decided to transfer the Applicant on vague complaint of M.L.A. and later it was that there was no substance in the complaint against the Applicant.

6. The Respondents have relied on the judgment of Hon'ble High Court (Aurangabad Bench) dated 05.05.2016 in Writ Petition No.1277/2016. That judgment has held that transfer of 330 Police Inspector by P.E.B. on administrative grounds, cannot be construed contrary to provision of Section 22N(1)(c) of the M.P.A. In the present case, the Applicant is transferred mid term on the complaint of the M.L.A. The complaint was later found to be without any substance. The facts are quite different.

7. Section 22N(2) of the M.P.A. provides for mid tenure transfer in exceptional cases, in public interest and on account of administrative exigencies. No exceptional case has been made out in the present case. Similarly, the impugned order can hardly be called in public interest. None of the

conditions in proviso to Section 22N(1) has been satisfied. The impugned order is in violation of Section 22N(2) of M.P.A. and cannot be sustained.

8. Having regard to the aforesaid facts and circumstances of the case, the order dated 13.01.2016 is quashed and set aside. The Applicant was granted interim relief by order dated 04.07.2016. That order merges with this order. The O.A. is allowed accordingly with no order as to costs.

(RAJIV AGARWAL)
VICE-CHAIRMAN

Place : Mumbai
Date : 24.10.2016
Typed by : PRK