

**THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

**ORIGINAL APPLICATION NO.829 OF 2016
(Subject : Transfer)**

DISTRICT : MUMBAI

Shri Siddharth Krushnarao Kasbe,)
 Senior Police Inspector of R.A.K. of Marg)
 Police Station, Wadala Mumbai – 37.)
 R/o. Chandra-Mallika, 4th Floor,)
 Flat No.404, Worli, Mumbai – 18.) **..APPLICANT**

VERSUS

1. The Commissioner of Police, Mumbai,)
 through the Police Establishment Board)
 at Commissionerate level, having office)
 at Mumbai Police Commissionerate,)
 L.T. Marg, Opp. Crawford Market, Fort,)
 Mumbai 400 001.)
2. Shri Bhagwat B. Bansod,)
 Working as Senior Police Inspector and)
 Transferred from N.M. Joshi Marg Police)
 Station to R.A.K. of Marg Police Station)
 Wadala Mumbai – 37.)
3. The State of Maharashtra,)
 Through Additional Chief Secretary,)
 Home Department, having office at)
 Mantralaya, Mumbai 400 032.)

....RESPONDENTS

Shri A.V. Bandiwadekar, learned Counsel for the Applicant.

Ms. S. Suryawanshi, learned Presenting Officer for the Respondents.

CORAM : SHRI RAJIV AGARWAL, VICE-CHAIRMAN

DATE : 24.11.2016.

J U D G M E N T

1. Heard Shri A.V. Bandiwadekar, learned Counsel for the Applicant and Ms. S. Suryawanshi, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant seeking cancellation of order dated 09.08.2016, transferring the Applicant from the post of Incharge Senior Police Inspector, R.A.K. Marg Police Station to Protection and Security Branch. The Applicant has also challenged the transfer of the Respondent No.2 in his place.

3. Learned Counsel for the Applicant argued that the Applicant was posted to R.A.K. Police Station by order dated 10.12.2015. As per Section 22N(1)(c) of the Maharashtra Police Act (M.P.A.), the Applicant is entitled to a tenure of two years in a police station. Also, transfer orders are required to be issued in the months of April or May. The impugned transfer order has been issued in the month of August, and that too before the Applicant had completed his tenure of two years. Learned Counsel for the Applicant argued that the minutes of the meeting of Police Establishment Board (P.E.B.) at Commissionarate level do not disclose that there were any

exceptional circumstances warranting issuing of mid-term transfer order dated 09.08.2016 in respect of the Applicant. In fact that impugned order only mentions that the Applicant was transferred on administrative grounds. As such the impugned order is not sustainable.

4. Learned Presenting Officer (P.O.) argued on behalf of the Respondents that this Tribunal had directed by order dated 11.08.2016 to produce complete set of documents consisting of the minutes of P.E.B, office note on the subject, if any, and evidence to suggest that these records were circulated to the members of P.E.B. Learned P.O. stated the Respondent No.1 has accordingly filed additional affidavit on 27.09.2016, and annexed compilation of documents. The meeting of the P.E.B. was held on 08.08.2016. Additional Commissioner of Police, Central Region has submitted a report to the Commissioner of Police, Mumbai on 08.06.2016 and it was proposed to start a Departmental Enquiry against the Applicant. It was also proposed to transfer the Applicant to a non-executive post. Learned P.O. argued that the Applicant was found to be prima facie guilty of serious misconduct in the matter of investigation of offence bearing C.R.No.122/2016 under Section 143, 149, 323, 341, 452 of the Indian Penal Code registered at R.A.K. Marg Police Station. Learned P.O. argued that the case of the Applicant is fully covered under Section 22N(2), as there were exceptional circumstances to order mid-term transfer of the Applicant. The impugned order is issued by the Competent Authority,

that is, the Police Establishment Board at Commissionarate level.

5. This Tribunal by order dated 11.08.2016, has given liberty to the Respondents to produce compilation of documents consisting of the minutes of P.E.B. office note on the subject and evidence to suggest that these records were circulated. The minutes of the P.E.B., meeting held on 08.08.2016 are enclosed by the Applicant as Exhibit A with his affidavit in rejoinder dated 19.08.2016. Part 4 of the aforesaid minutes deal with the case of 14 officers, including the Applicant. It is stated in the minutes that :-

“महाराष्ट्र पोलीस अधिनियम (सुधारित) २०१५ कलम २२(न) चे पोट कलम (२) व त्याखालील सुधारित स्पष्टीकरणानुसार आयुक्त स्तरावरील पोलीस आस्थापना मंडळ यांना प्रदान करण्यात आलेल्या अधिकाराचा वापर करून बृहन्मुंबई पोलीस आयुक्तालयाच्या स्तरावरील पोलीस आस्थापना मंडळाने विचारविनियम करून निम्ननिर्देशित पोलीस अधिरा-यांची त्यांच्या नावासमोर दर्शविलेल्या रकाना क्र.३ येथून रकाना क्र.४ मध्ये दर्शविलेल्या ठिकाणी प्रशासकीय कारणास्तव नेमणुका करण्याचा निर्णय घेण्यात आला आहे ”

In the opening paragraph of the minutes, it is stated that :-

“बृहन्मुंबई पोलीस आयुक्तालयाच्या आस्थापनेवर कार्यरत असलेले सहायक पोलीस आयुक्त / वरिष्ठ पोलीस निरीक्षक / पोलीस निरीक्षक / सहायक पोलीस निरीक्षक / पोलीस उप निरीक्षक यांच्या मा. पोलीस आयुक्त, बृहन्मुंबई यांचे आज्ञांकित कक्षात उपस्थित राहून केलेल्या विनंतीबाबत, बाहेरून बदलीने हजर झालेले, पदोन्नतीवर कार्यमुक्त करणे, वरिष्ठ पोलीस निरीक्षक म्हणून संबोधित करणे, प्रादेशिक विभागीय कार्यालयाकडून प्राप्त झालेले शिफारशी अहवाल तसेच प्रशासकीय कारणास्तव नेमणूक करणे इत्यादी विषयाच्या अनुषंगाने पोलीस अधिका-यांच्या नेमणूका करण्यासंदर्भात विचारविनिमय करून खालील प्रमाणे निर्णय घेण्यात आले आहेत.”

There is no mention anywhere that any default report against any officer was considered in this meeting of P.E.B. The Respondent no.1 in his additional affidavit-in-

reply dated 27.09.2016 has included voluminous documents regarding alleged misconduct of the Applicant. It is not really necessary to go into those documents. In para 22 of the aforesaid affidavit, it is mentioned that :-

“..... it is submitted that detailed observations were made by various authority from A.C.P. to Joint C.P. regarding misconduct, the default on the part of the duties of the Applicant in connection with the C.R.No.60/2016, 122/2016 and accordingly, transfer the Applicant to Non-Executive post was proposed and recommended. Simultaneously, Jt. C.P. (L & O) directed to initiate the departmental enquiry against the Applicant. The said proposal was considered by the members of the board properly during the said meeting and after due consideration by the board the transfer of Applicant has been issued.”

6. It is true that Exhibit AR-7 has default report against the Applicant and also contains proposal to transfer him to a non-executive post and to start a D.E. against him. However, there is no mention that the default report may be placed before P.E.B. As already noted, there is no mention in the minutes of the P.E.B. dated 08.08.2016 that default report against the Applicant was considered by P.E.B. or that it was placed before P.E.B. Alleged misconduct of the part of the Applicant may be quite serious, but it was required to be placed before P.E.B., and there is no evidence that it was considered by P.E.B. The impugned order was issued only on administrative grounds as is evident from minutes of P.E.B. meeting and this which does not fulfill the requirement of

Section 22N(2) of M.P.A. for mid-term transfer. The impugned order is, therefore, unsustainable.

7. The Applicant has also challenged the order dated 09.08.2016, posting the Respondent No.2 as Senior Police Inspector, R.A.K. Marg, Police Station. It is not clear that the Respondent No.2 is posted in place of the Applicant. There may be more than one post of Police Inspector in R.A.K. Marg Police Station and it is the discretion of Commissioner of Police to designate any one of them as Senior Police Inspector. No interference in the transfer order of the Respondent No.2 is warranted on the basis of facts on record.

8. Having regard to the aforesaid facts and circumstances of the case, this Original Application is partly allowed. Transfer of the Applicant from R.A.K. Marg Police Station to Protection & Security Band by order dated 09.08.2016 is quashed and set aside. The Respondent No.1 will post the Applicant back to R.A.K. Marg Police Station within seven days from the date of this order. No order as to costs.

Sd/-

(RAJIV AGARWAL)
VICE-CHAIRMAN

Place : Mumbai
Date : 24.11.2016
Typed by : PRK