

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 502/2024 (S.B.)

Sanjay S/o Nagorao Mogle,
Aged about 48 years, Occ. Service,
R/o C/o Police Station Campus,
Bhamragad, Dist. Gadchiroli.

Applicant.

Versus

- 1) The State of Maharashtra,
Through it's Additional Chief Secretary,
Home Department,
Mantralaya, Mumbai- 400 032.
- 2) The Director General of Police,
Having its Office Near Regal Theater,
Kolaba, Mumbai.
- 3) The Superintendent of Police,
SP complex, Gadchiroli,
Maharashtra - 442 605.

Respondents

Shri S.P.Palshikar, Id. Advocate for the applicant.

Shri A.P.Potnis, Id. P.O. for the respondents.

Coram :- Hon'ble Shri M.A.Lovekar, Member (J).

JUDGMENT

Judgment is reserved on 19th Sept., 2024.

Judgment is pronounced on 27th Sept., 2024.

Heard Shri S.P.Palshikar, ld. counsel for the applicant and Shri A.P.Potnis, ld. P.O. for the Respondents.

2. Case of the applicant is as follows. He holds the post of Police Inspector. By order dated 29.10.2020 (A-1) he was transferred from Gadchiroli to Pune City and posted at Deccan Gymkhana, Police Station. In May, 2022 he was transferred to Kondwa, Police Station, Pune. By order dated 26.12.2023 (A-2) he was transferred to Traffic Branch, Pune. By the impugned order dated 26.02.2024 (A-3) he was transferred to Gadchiroli and posted at Control Room, Gadchiroli. By order dated 07.03.2024 (A-4) he was posted at Bhamragad, Police Station. Before completion of tenure of two years at Traffic Branch, Pune, in December, 2025 he could not have been transferred. He was holding a non-executive post. He was not due for transfer. His home district is Latur. For these reasons he could not have been transferred by relying on directives issued by Election Commission of India. The impugned order of transfer is contrary to Circular dated 20.03.2024 (A-5). His representation dated 04.04.2024 (A-6) ought to have been considered. Hence, this Original Application for quashing the impugned order or in the alternative, to direct respondent no. 2 to consider options for posting given by the applicant by representation dated 04.04.2024.

3. Stand of respondent no. 3, in addition to denying material averments in the O.A., is that representation dated 04.04.2024 made by the applicant is forwarded to respondent no. 2 who is the competent authority, for necessary orders.

4. The impugned order gives the background as follows:-

लोकसभा सार्वत्रिक निवडणूका-२०२४ च्या अनुषंगाने उपरोक्त संदर्भ क्र. २ च्या पत्रान्वये, मा. केंद्रीय निवडणूक आयोग, नवी दिल्ली यांनी दिलेल्या मार्गदर्शक सूचना /निर्देशानुसार सर्व पोलीस आयुक्त व परिक्षेत्रीय विशेष पोलीस महानिरीक्षक या घटक प्रमुखांकडून बदलीपात्र पोलीस निरीक्षकांची माहिती उपरोक्त संदर्भ क्र. ३ च्या ज्ञापान्वये मागविण्यात आली होती. त्यानुसार सर्व संबंधित घटक प्रमुखांकडून प्राप्त झालेल्या प्रस्तावातील माहितीची छाननी करून छाननी अंती बदलीपात्र पोलीस निरीक्षकांच्या बदल्या करण्याकरिता महाराष्ट्र पोलीस अधिनियम, १९५१ मधील कलम-२२ न (२) अन्वये, पोलीस आस्थापना मंडळ क्र.२ यांनी दिलेल्या मान्यतेनुसार, उपरोक्त संदर्भ क्र. ४ च्या आदेशान्वये एकुण १३० पोलीस निरीक्षकांची त्यांच्या घटकातून इतर घटकांत बदली करण्यात आली होती.

२. तदनंतर, मा. मुख्य निवडणूक अधिकारी, महाराष्ट्र राज्य यांनी उपरोक्त संदर्भ क्र. ५ अन्वये, दिलेल्या निर्देशानुसार बदलीस पात्र असलेल्या पोलीस निरीक्षकांची नव्याने माहिती मागविण्यात आली व त्यानुसार लोकसभा सार्वत्रिक निवडणूका - २०२४ च्या अनुषंगाने पोलीस निरीक्षकांची बदली करण्याकरिता संबंधित घटकांकडून प्राप्त झालेल्या प्रस्तावाची तपासणी करून तपासणी अंती बदलीस पात्र पोलीस निरीक्षकांच्या याद्या तयार करण्यात आल्या, महाराष्ट्र पोलीस अधिनियम, १९५१ मधील कलम-२२ न (२) मधील तरतुदीनुसार पोलीस आस्थापना मंडळ क्र.२ यांना जनहितार्थ आणि प्रशासकीय निकडीनुसार सक्षम प्राधिकारी म्हणून प्रदान असलेल्या अधिकाराचा वापर करून, तसेच, मा. भारत निवडणूक आयोग व मा.मुख्य निवडणूक अधिकारी, महाराष्ट्र राज्य यांनी दिलेल्या निर्देशाप्रमाणे खालील नमुद पोलीस निरीक्षकांच्या त्यांच्या नावांसमोर दर्शविलेल्या

रकाना क्र. ४ मध्ये नमूद केलेल्या ठिकाणी बदली करण्याचा पोलीस आस्थापना मंडळ क्र. २ यांनी मा. मुख्य निवडणूक अधिकारी यांच्या सल्लामसलतीने निर्णय घेतला असून, मा.मुख्य निवडणूक अधिकारी, महाराष्ट्र राज्य यांनी उपरोक्त संदर्भ क्र. १० च्या पत्रान्वये सदरहू बदल्या करण्यास सहमती दिलेली आहे.

Thus, the impugned order of transfer was passed by taking recourse to Section 22 N (2) of the Maharashtra Police Act, 1951 which reads as under:-

In addition to the grounds mentioned in sub-section (1), in exceptional cases, in public interest and on account of administrative exigencies, the Competent Authority shall make mid-term transfer of any Police Personnel of the Police Force.

5. The applicant has relied on the common judgment dated 19.07.2024 passed by Principal Bench of this Tribunal in a batch of Original Applications wherein it is held:-

Thus 'Section 22N(2)' cannot be extrapolated to effect large scale 'Mid-Term' & 'Mid-Tenure' transfers of 'Police Personnel' on grounds which are not 'intra legem' such as (a) Serving in 'Home District' and / or (b) Completion of '3 Years' tenure during last '4 Years' in 'Revenue District'. Further, 'Exceptional Cases' under 'Section 22N(2)' must be understood as those which require exceptions to be made to what is provided in law and not be liberally interpreted as exceptions which can even be made to what is extraneous to law.

6. The applicant has further relied on the judgment dated 05.04.2024 passed by Aurangabad Bench of this Tribunal in O.A. No.

229/2024. In this case, on facts, it was found that case of the applicant did not fall within para 3 of directives of Election Commission of India and hence his transfer order could not be sustained. It appears that in this case the transfer was effected solely on the ground of directives of Election Commission of India, and the applicant was not due for transfer. This case is distinguishable on facts. In the instant case the impugned order was passed under Section 22 N (2) of the Act. Therefore, the question to be determined is whether the impugned order could be sustained regard being had to facts of the case and Section 22 N (2) of the Act. I have quoted part of the impugned order which gives the background. While passing the order dated 26.02.2024 earlier transfer order dated 30.01.2024 was reconsidered and lists of officers due for transfer were prepared. P.E.B.-2 accorded approval after consultation with Chief Election Officer. Perusal of order dated 26.02.2024 ex-facie shows that it was passed in terms of Section 22 N (2) of the Act.

7. According to the applicant, he ought not to have been transferred from Traffic Branch, Pune before completion of his tenure of two years in December, 2025. In view of following observations of the **Hon'ble Bombay High Court (Aurangabad Bench) dated 22nd Dec.,**

2018 in Ashok S/o Rangnath Barde Vs. The State of Maharashtra &**Ors. 2019 (3) ALL MR 382, this submission cannot be accepted:-**

The place of posting has, therefore, to mean that a particular town or city, whereat an incumbent is posted irrespective of the fact of he having served with very many branches of the same department at various places in the same town or city.

8. The applicant has prayed in the alternative that the respondent no. 2 be directed to consider choices given by him in representation dated 04.04.2024 (A-6), and post him suitably.

9. Having considered facts of the case, relevant provisions and rival submissions I have come to the conclusion that the O.A. deserves to be allowed in the following terms. Respondent no. 2 shall decide representation dated 04.04.2024 (A-6) made by the applicant on its own merits within two months from today, by taking into account, *inter alia*, choices given by the applicant, and communicate the decision to the applicant forthwith. No order as to costs.

Member (J)

Dated :- 27/09/2024

aps

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Akhilesh Parasnath Srivastava.

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 27/09/2024
and pronounced on

Uploaded on : 30/09/2024