

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO. 498 OF 2016

DISTRICT : Solapur

Mr. Deepak Sopanrao Pawar.)
Age: 55 years, Occ.: Police Inspector.)
R/at: Washi, Tal. Washi,)
Dist. Usmanabad.)...**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 Superintendent of Police)
Solapur Rural, Sakhar Peth,)
Solapur-5.)....**Respondents**

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

Shri A.J. Chougule, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal, Vice-Chairman

DATE : 22.08.2016




ORDER

1. Heard Shri K.R. Jagdale, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

2. This Original Application has been filed challenging the transfer order dated 24.5.2016 issued by the Respondent No.2 transferring him from Solapur District (Rural) to Washim District, before the Applicant had completed his tenure of four years in Solapur District and 6 years in Kolhapur Police Range.

3. Learned Counsel for the Applicant argued that the Applicant was transferred by order dated 26.5.2014 from Navi Mumbai Police Commissionerate to Solapur (Rural) District under Kolhapur Range and he joined there on 30.5.2014. The Applicant was posted in the Control Room on 24.3.2015. Learned Counsel for the Applicant stated that as per Section 22N(1) (c) normal tenure of a Police Officer of the rank of Police Inspector is four years in a District and eight years in Range and two years in a Police Station or a Branch. The Applicant has not completed two years in Control Room. He has not completed in tenure of four years in Solapur (Rural) district and eight years in Kolhapur Range. His transfer by order dated 24.5.2016 to Washim District has been issued in total disregard to the provision of Section 22N (1) (c) of the Maharashtra Police Act (M.P.A.). Learned Counsel for the Applicant argued that the Competent




Authority can order mid-term transfer of a Police Personnel only in exceptional cases, in public interest and on account of administrative exigencies under Section 22(N) (2) of M.P.A. However, the Police Establishment Board No.2 (P.E.B.-2) had not made out any exceptional case for transfer of the Applicant. In fact, the impugned order does not disclose any reason for transferring the Applicant before completion of his district/Range tenure. Learned Counsel for the Applicant stated that the Respondents' claim that the Applicant was transferred as there was a default report against him dated 20.5.2016 from the Respondent No.3. However, there is nothing on record to suggest that the aforesaid default report was considered by P.E.B.-2 in its meeting held on 24.5.2016. On 24.5.2016, a total of 70 Police Inspectors were transferred, before completion of their respective tenures. This Tribunal in O.A. nos.466 and 467 of 2016 by judgment dated 12.7.2016 has held in para 23 that:-

“..... and therefore, mere high sounding, serious looking allegation of complaint or incompetence would not be enough to sustain such an order of transfer unless more tangible material was placed before the judicial forum in support of the case of the Respondents.”

In para 24 of the judgment regarding meeting of PEB-2 on 24.05.2016 it is observed that:-

“ Therefore, it is quite clear that it appears highly improbable that the case of as many as 70 officers could be considered in one meeting and there could be meaningful application of mind to such an important aspect of the matter.”



4. Learnd Presenting Officer (P.O.) argued on behalf of the Respondents that the Respondent No.3 has submitted a default report dated 20.5.2016 against the Applicant to the Respondent No.2. The Applicant was found to be negligent in discharge of his duties. His negligence in a case of harassment of a girl in Kasegaon Village, when the Applicant was working at Solapur Talika Police Station, has resulted in a serious law and order problem. A Departmental Enquiry was started against the Applicant and he has been issued a show cause notice regarding punishment. The Applicant was, then posted to Police Control Room, where also, he has not been able to provide leadership to the sub-ordinate staff. He didnot discharge his duties correctly in the Police Recruitment of 2016. The Respondent No.3 had, therefore, recommended that the Applicant may be transferred to some other district. PEB -2 in its meeting on 24.5.2016 considered this report and decided to transfer the Applicant to Washim district. Learned P.O. argued that the order of transfer of the Applicant meets the requirement of mid-term transfer of the Applicant as per Section 22N(2) of the M.P.A. as there were exceptional circumstances, and the transfer order was issued in public interest and on account of administrative exigencies.

5. It is seen that the Applicant has challenged his transfer by impugned order dated 24.5.2016 on the ground that there were no exceptional circumstances for his transfer before completion of his district/Range tenure as per M.P.A. The Respondents' case is that the report dated 20.5.2016 from the Respondent No.3 disclosed exceptional

29

circumstances, which warranted transfer of the Applicant before completion of his tenure. Learned Counsel for the Applicant has quoted from the judgment of this Tribunal dated 12.7.2016 in O.A.Nos.466 and 467 of 2016. That judgment was also regarding Applicants who were transferred by the same impugned order dated 24.5.2016 pursuant to meeting of PEB-2 on 24.5.2016. That judgment is, therefore, fully applicable to the facts in the present case. It will also be instructive to quote para 25 of the aforesaid judgment:-

“As far as the impugned order is concerned, it is a general order applicable to 70 Personnel and makes a general looking reference to the adverse reports and public interest. As a matter of fact, there are no details furnished in respect of each one of the Personnel including the Applicants. For all one knows, there was an attempt to make improvement even in respect of the allegations. Mrs. Mahajan in this behalf referred me to **Mahendersingh Gill Vs. Chief Election Commissioner, AIR 1978 SC 851** and told me that in matters such as this one, the order itself and nothing extraneous should be invoked in support of the said order. If that be so, then the material produced before me at the time of argument to show as to how that one of the Applicants could not exercise proper control, etc. at the time of some Yatra, etc. will be of no significance. This aspect of the matter has to be understood along with the other incurable infirmities in the case of the Respondents.”

This Tribunal has held that it was highly improbable that the PEB-2 has applied its mind to complaints/default reports received against Applicant (and others whose names appear in the impugned order). The minutes of meeting of PEB-2

14

held on 24.5.2016, which were perused by this Tribunal did not disclose that report of the Respondent No.3 dated 20.5.2016 was considered by PEB-2. The order dated 24.5.2016 also does not mention anything about that report. As held by Hon'ble S.C. in Mahendersingh Gill's case (supra), the impugned order itself should speak for itself and the material produced with affidavit in reply will be of no significance. In any case, serious working allegations/complaints are not enough to sustain transfer order, in view of the provisions of the M.P.A. On these grounds viz. the P.E.B.-2 didnot apply its mind to the default report against the Applicant, the impugned order does not mention any exceptional case, except mentioning that some report was received, to justify mid-term transfer of the Applicant, and the fact that the impugned order cannot be supplemented by justification in the affidavit in reply, the impugned transfer order qua the Applicant is unsustainable.

6. Having regard to the aforesaid facts and circumstances of the case, impugned order dated 24.5.2016 qua the Applicant is quashed and set aside. The Respondents will post the Applicant back to his former post within two weeks from the date of this order. This O.A. is allowed accordingly with no order as to costs.

Sd/-

(RAJIV AGARWAL)
(VICE-CHAIRMAN)