

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NOS.61 to 64 OF 2017

DISTRICT : PUNE

ORIGINAL APPLICATION NO.61 OF 2017

Shri Pravinkumar G. Gosavi.)
Age : 49 Yrs, Working as Head Constable,)
Residing at D/404, Florencia, Wakad,)
Pune 411 057.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Chief Secretary,)
Mantralaya, Mumbai - 400 032.)
2. The Additional Chief Secretary,)
Home Department, Mantralaya,)
Mumbai 400 032.)
3. The Director General of Police,)
M.S, Shahid Bhagatsingh Marg,)
Mumbai.)
4. The Superintendent of Police,)
Pune Rural, Chavan Nagar,)
Pashan Road, Pune 411 008.)...**Respondents**



WITH

ORIGINAL APPLICATION NO.62 OF 2017

Shri Pravin Anant Mundhe.)
Age : 39 Yrs, Working as Police Naik,)
Residing at S.No.249/1, Murkute Wasti,)
D.P. Road, Aundh, Pune 411 007.)...**Applicant**

Versus

1. The State of Maharashtra & 3 Ors.)...**Respondents**

WITH

ORIGINAL APPLICATION NO.63 OF 2017

Shri Ayaj Magbul Shaikh.)
R/at. Flat No.10, Govind apartment,)
Laxmi Baug Colony, Talegaon Dabhade,)
Tal. : Maval, District : Pune.)...**Applicant**

Versus

1. The State of Maharashtra & 3 Ors.)...**Respondents**

WITH



ORIGINAL APPLICATION NO.64 OF 2017

Shri Ibrahim Gani Shaikh.)
 Age : 49 Yrs, Working as Police Naik,)
 Residing at Flat No.20, Vishram Apartment,))
 Gurufhar Society, Nashik Road,)
 Bhosari, Pune.)...**Applicant**

Versus

1. The State of Maharashtra & 3 Ors.)...**Respondents**

Mrs. Punam Mahajan, Advocate for Applicants.

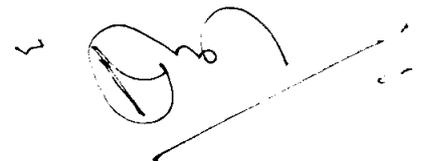
Mrs. A.B. Kololgi, Presenting Officer for Respondents.

P.C. : R.B. MALIK (MEMBER-JUDICIAL)

DATE : 24.04.2017

JUDGMENT

1. These four Original Applications (OAs) are being disposed of by this common Judgment and the only issue on which they are decided is the legal competence post 16th April, 2015 of the Director General of Police, State of Maharashtra to issue the orders of transfer of these Applicants, who were the constables from Pune Rural to Dhule. It is common ground that this is inter-district

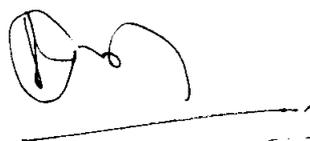


transfer and there had been no role of the concerned Police Establishment Board in effecting these transfers.

2. I have heard Mrs. Punam Mahajan, the learned Advocate for the Applicants and Mrs. A.B. Kololgi, the learned Presenting Officers for the Respondents.

3. It is common ground that, none of the Applicants had completed the tenure of five years in Pune Rural. The impugned order which is Annexure 'A-4' (Page 24 of the Paper Book (PB)), dated 18.1.2017 was unpurported exercise the powers under the Maharashtra Police Manual, 1959 Chapter I, Rules 165 and 166 (1)(b) read with Section 28(1) of Maharashtra Police Act, 1951 and somewhat erroneously, the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (Transfer Act) have also been invoked. I think, it must be made clear that, to the Police Establishment, the governing provision will be of Maharashtra Police Act and not Transfer Act.

4. The learned PO in strongly opposing the OA invited reference to the complaints made by the Hon'ble MLA against the Applicants with regard to their high-



handed and illegal activities. It will not be necessary for me to examine in detail that aspect of the matter because these OAs admit to their disposal on the issue of the competence and legality of the order of inter-district transfer of the Constables in the teeth of the relevant provisions of Section 22-N(2) and other provisions relevant therefor of the Police Act. It is very clear that there has been no recourse to Police Establishment Board and there was naturally no recommendation on their part. It is not even necessary for me to closely examine the academic aspect of the matter involved with PEB, etc. when nothing was done in that behalf.

5. The Respondents rely on the provisions of Section 28(1) of the Police Act in supporting their case that the transfer made by the Director General of Police of the Applicants – Constables is legally supportable. Section 28 of the Police Act needs to be reproduced herein.

“28. Police Officers to be deemed to be always on duty and to be liable to employment in any part of the State.-

(1) Every Police Officer not on leave or under suspension shall for all purposes of this Act be

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deemed to be always on duty, and any Police Officer or any number or body of Police Officers allocated for duty in one part of the State may, if the State Government or the {Director-General and Inspector-General so directs, at any time, be employed on Police duty in any other part of the State for so long as the services of the same may be required there.”

6. Now, it is very clear from a mere perusal of the said provision that the word, “employed” would not tantamount to transfer as the phrase is understood in the realm of the relevant provisions of law. Transfer and employment in the sense the word, “employed” has been used are entirely different. If one were to take into consideration Section 28(2) then granting all latitude to all concerned, the procedure therein has not been followed at all.

7. The provisions of the Police Manual with particular reference to Chapter V, Vol.1, Rules 165 and 166 were invoked with particular emphasis. Rule 166 relates to ordinary transfers which we were not concerned with. Rule 165 sets out *inter-alia* that under Section 28(1) of the Police Act, the IGP was authorized to make whenever

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necessary inter-district transfers of Police Establishments without reference to the Government. There are directions to be followed by the Superintendents of Police and Rule 165(3) is in essence what Section 28(2) of the Police Act is. Now, it is nobody's case that these provisions of the Police Manual are post 16th April, 2015. That apart, the efficacy of the Police Manual vis-à-vis duly enacted law contained in the relevant provisions of the Maharashtra Police Act has to be clearly understood. The Rules of Manual which are quite old after-all are nothing more than directions issued by the Police to the Police from highest or higher to the subordinates, but by no stretch of imagination, can the said provisions control the duly enacted law.

8. I am, therefore, clearly of the opinion that the reliance on the provisions of the Manual is not quite apposite and again one cannot envisage a situation whereby the law will be controlled by such directions as they are contained in the Police Manual.

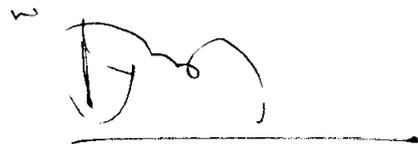
9. The Respondents rely upon **OA 1129/2013 (Shri Yuvraj S. Patil Vs. The Director General of Police and one another, dated 28th April, 2014) (CORAM : the Hon'ble Administrative Member)** and **OA 250/2014 (Shri Mahendra S. Bairagi Vs. The Director General of**



Police, Mumbai and 3 others, dated 6th August, 2014 (CORAM : the Hon'ble Administrative Member). Both these pronouncements were much before the amended provisions of Section 22(N) of the Maharashtra Police Act came into force and that is a momentous point of distinction.

10. The Respondents' reliance on **Union of India Vs. Shri Janardhan Debanath and another : Appeal (Civil) 1010-1011 of 2004** is also not quite apposite because the facts therein pertaining to a particular Central Government services were entirely different.

11. The Respondents lastly relied upon the Judgment of a Division Bench of the Hon'ble Bombay High Court at Aurangabad Bench in **Writ Petition No.1277/2016 (Sanjay G. Deshmukh Vs. The State of Maharashtra and 3 others, dated 5.5.2016)**. That was a Writ Petition carried to the Hon'ble High Court against the order of this Tribunal at its Aurangabad Bench. It is not necessary in my opinion to closely examine the facts therein. The provisions of Section 22(N) of the Maharashtra Police Act came up for consideration, but here, as already mentioned above, the issue is about the



competence of the Director General of Police to effect the transfers in the manner they have been done.

12. The upshot is that, on the short point of competence of the authority making the impugned order, these OAs need to be allowed. I make it clear that I have not decided this matter on any other issue or point and if need be, it may be mentioned that, all those points are left open.

13. The impugned orders stand hereby quashed and set aside on the issue of competence of the authority making the impugned orders. The Respondents are directed to take steps to repost the Applicants at the places where they had been transferred from. These Original Applications are allowed in these terms with no order as to costs. Compliance within two weeks.

Sd/-
(N.D. MAHAJAN)
Member-J
24.04.2017

Mumbai
Date : 24.04.2017
Dictation taken by :
S.K. Wamanse.