

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.10867 OF 2015

Ravindrasingh s/o Rakhasingh Dhunne,
Age: 48 years, Occu.: Service
(Assistant Police Inspector),
R/o. Sonkhed, Taluka Loha,
District: Nanded.

PETITIONER
(Original Applicant)

VERSUS

1. State of Maharashtra,
Through its Secretary,
Home Department,
Mantralaya, Mumbai-400 032.
2. The Special Inspector General of Police,
Nanded Division, Nanded.
3. The Superintendent of Police,
Nanded, Taluka and Dist.Nanded
4. The Police Station Officer,
Sonkhed Police Station,
Taluka: Loha,
District Nanded.

RESPONDENTS
(Orig. Respondent
Nos.1 to 4)

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Ms.Peeti R. Wankhede, Advocate for the
petitioner.
Mr.S.D.Kaldate, AGP for respondent Nos.1 to 4

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**CORAM: S.S.SHINDE &
SANGITRAO S.PATIL, JJ.**

Reserved on : 01.08.2016
Pronounced on : 12.08.2016

JUDGMENT: (Per S.S.Shinde, J.):

1. Heard.

2. This Petition takes exception to the impugned order dated 01.09.2015 passed by the Maharashtra Administrative Tribunal Mumbai Bench at Aurangabad in Original Application No.206/2015 (for short 'MAT') and further takes exception to the impugned order of transfer of the petitioner dated 25.03.2015 issued by respondent no.3.

3. It is the case of the petitioner that the petitioner entered in the service of respondent no.1 on the post of Police Constable in Aurangabad Range in the year 1985 and he was promoted to the post of Police Sub-Inspector in the year 2000. The

petitioner, while working as Police Sub-Inspector, worked at various Police Stations in different Districts viz. Bombay, Nagpur and Nanded in the Maharashtra as Police Sub Inspector up to 2011. On 21.10.2011, the petitioner was again promoted to the post of Assistant Police Inspector and was posted in Aurangabad Range. Within a period of three months, again on 03.01.2012, he was transferred to Nanded Division, by order of transfer issued by respondent no.2 and respondent no.3 was instructed to allot the place of posting to him. Accordingly, the petitioner was given posting at Degloor in Nanded District.

4. It is further the case of the petitioner that within a period of 8 months, respondent no. 3 again transferred the petitioner to Gurudwara Protection Unit in Nanded on 24.08.2012 and then on 22.10.2012, 26.06.2013, 06.08.2013, 13.08.2013 and

22.09.2013 he was transferred under the garb of deputation to various places. On 25.09.2013, the petitioner was again transferred to Sonkhed in general transfer orders.

5. It is further the case of the petitioner that during the tenure at Sonkhed, the petitioner's work was appreciated by respondent no.3 many times. Respondent no.2 had also appreciated the petitioner for his good and sincere work, by communication dated 01.09.2014. When the petitioner had completed period of only one and half year on the said post, again he was transferred from Sonkhed to Police Control Room, Nanded on 25.03.2015. Hence this Writ Petition.

6. The learned counsel appearing for the petitioner submits that on many occasions, the petitioner is transferred under the garb of deputation. The transfer of

the petitioner was mid-tenure and mid-term transfer, without considering the provisions of Section 22N of the Maharashtra Police Act. It is further submitted that in view of the provisions contained in Sections 4 (1) and 4 (4) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Official Duties Act, 2005, the transfer of Government servants are to be effected only after completion of the statutory tenure as prescribed in Section 3 and that too only once a year in the month of April or May. As such, any transfer sought to be effected before completion of the said statutory tenure of three / six years, as the case may be, and/or except the months of April or May amounts to a mid-tenure and a mid-term transfer. True it is that the provisions contained in Sections 4 (4) (2) and 4 (5) of the Transfers Act, permit the Competent Authority to effect mid-term and

mid-tenure transfers respectively, however, a bare look at the said provisions establishes that a specific and mandatory statutory procedure is necessarily required to be followed before effecting such mid-term and mid-tenure transfers and unless and until the same is followed, the transfer does not become legal. In other words, for a mid-tenure and/or mid-term transfer to be legal the statutory procedure as prescribed in the said Act is mandatorily required to be followed failing which the action becomes illegal.

7. It is further submitted that it is explicitly and abundantly clear that the petitioner is sought to be transferred and posted out of his present office/Department in mid-term and before completion of his tenure of 3 years and by an authority not competent to transfer. It is submitted that in view of Section 22N (1) of the said Act,

the petitioner is entitled to a tenure of 2 years on a post and the Competent Authority to transfer the Assistant Police Inspector is the State Government. Therefore, his transfer, which is mid-tenure transfer and not by the Competent Authority, deserves to be cancelled.

8. It is submitted that the Maharashtra Administrative Tribunal (for short 'MAT') has not properly considered the relevant provisions and the fact that the petitioner has been transferred frequently in the past by the respondents without any justifiable reasons. The MAT ought to have appreciated that the very purpose and intention of the Legislature in introducing the Transfers Act was to protect them from arbitrary and high-handed actions of mid-term and mid-tenure transfers.

9. It is further submitted that if the

MAT was of the opinion that there were complaints against the petitioner, which was the reason for his frequent transfers, then it was, in fact, required of the MAT to have considered the issue regarding the genuineness of the allegations as in none of them neither the petitioner is held guilty by any competent court of law nor most of them were levelled before filing the Original Application of the petitioner and it was not proper and legal on the part of MAT to observe that respondent no.3 was the competent authority to consider the same and transfer the petitioner.

10. The learned counsel appearing for the petitioner pressed into service exposition of law in the case of *Somesh Tiwari Vs. Union of India and others*¹ and submits that the order of transfer can be passed in the administrative exigencies, but

¹ (2009) 2 SCC 592

an order passed by way of, or in lieu of the punishment, being wholly illegal, is liable to be set aside.

11. The learned counsel appearing for the petitioner also invites our attention to the averments in the rejoinder-affidavit to the affidavit-in-reply and submits that the Petition deserves to be allowed.

12. The learned AGP appearing for the respondent – State relying upon the averments in the affidavit-in-reply filed on behalf of respondent no.3 submits that it is true that the petitioner was transferred to Degloor Police Station on 16.11.2011, but the petitioner failed to perform his official duty effectively and proceeded on medical leave, without handing over the charge to any of other Officers. Therefore, the then Sub Divisional Police Officer, Shri S.B. Suryawanshi, issued office order dated

10.06.2012 to hand over the charge of crime paper to the other Officer. Therefore, the then Superintendent of Police, Nanded, Shri V.N.Jadhav, temporarily deputed the petitioner to the Police Control Room, Nanded. During the attachment at Police Control Room, Nanded, the petitioner was deputed at Gurudwara Protection Unit (GPU), Nanded and at Anti-Decoity Squad (Special Branch), Nanded. During the said period, the additional charge of Police Station, Limbgaon and Ardhapur was also given to the petitioner as an administrative arrangement. When the petitioner was at Anti-Dacoity Squad (ADS), Nanded, the office of the present respondent received various complaints against petitioner, not only this, but various times present petitioner's conduct and working style came to be questioned. Therefore, considering the allegation against the petitioner and petitioner's irresponsible

behaviour, the respondent again issued the order of deputation/deployment of the petitioner and attached him to the Police Control Room on 21.01.2013. Not only this, the petitioner, during the deployment at ADS (Anti Decoity Squad), committed serious illegal acts, therefore, one crime has also been registered against the petitioner with Police Station Itwara, Nanded, vide Crime No. 115/2013, under Section 342, 323, 504, 506, 34 of IPC. During the investigation, the Investigation Officer found sufficient evidence against the petitioner. Therefore, the Investigation Officer submitted charge sheet against the petitioner, vide SCC No. 1284/2015 dated 29.06.2015.

13. It is further submitted that on 25.09.2013, the petitioner was deployed to Police Station Sonkhed from the Police Station Degloor, since his original posting was at Police Station Degloor. It is

specifically denied that the petitioner is transferred from Sonkhed to Police Control Room, Nanded. In fact, the petitioner was deployed from the Police Station Sonkhed to Police Control Room, Nanded as the complaints against the petitioner regarding his conduct and working style were received by the office of respondent no.3. The allegations against the petitioner, including threatening the complainant in ACB case, his illegal detention and causing mental and physical torture to him in order to influence his deposition as the complainant in an ACB case, which incidentally was registered against a Head Constable in the petitioner's Police Station and who was allegedly quite close to the petitioner. Therefore, being administrative head, it was the duty of respondent no.3 to protect the rights of the complainant, therefore, the decision was taken to depute the petitioner from Sonkhed

Police Station to Control Room in the interest of justice and on reasonable administrative ground and to ensure the free and fair trial of the said ACB case.

14. It is submitted that one Ramesh Manikrao Dalve, r/o. Vadepuri, Taluka Loha, District Nanded, made an application to the office of respondent no.3 and alleged that API Dhune, illegally abducted him and detained in the custody, who is the complainant of illegal gratification case filed against the Constable Bashir of P.S.Sonkhed, where the API Dhunne is incharge of the Police Station, API Dhunne forced the Ramesh Dalve to withdraw the ACB complaint against suspended Police Constable Bashir. As the allegation in the application was of serious nature, respondent no.3 took immediate cognizance and ordered thorough enquiry into the matter and enquiry is handed over to the Sub-Divisional Police Officer,

Sub Division, Itwara, Nanded. For conducting the free, fair and impartial enquiry and to ensure the free and fair trial of the said ACB case, it was warranted that the petitioner Shri Dhunne should immediately be deputed to another post, respondent no.3 issued order dated 25.03.2015. The learned AGP further submits that all the allegations made in the Petition are devoid of any substance, therefore, the Petition may be rejected.

15. The learned AGP appearing for the respondent - State also invites our attention to the affidavit-in-reply to the rejoinder-affidavit filed on behalf of respondent no.3 and submits that the transfer of the petitioner is not at the instance of any political personality as alleged by the petitioner and it was in the circumstances stated in the affidavit-in-reply filed by respondent no.3.

16. We have considered the submissions of the learned counsel appearing for the petitioner and the learned AGP appearing for the respondent - State. With their able assistance, perused the pleadings in the Petition, grounds taken therein, affidavit-in-reply and additional affidavit-in-reply filed by respondent no.3. We have carefully perused the reasons assigned by the MAT, in the light of the documents placed on record, and we are of the opinion that the observations made by the MAT that the impugned order is not in the nature of transfer, but the applicant has been deputed at Head Quarter, Nanded from the Police Station Sonkhed, appears to be in consonance with the documents placed on record. The Superintendent of Police is well within jurisdiction to depute the subordinate Officers within the Nanded District. The another contention raised by the learned

counsel appearing for the petitioner that the mid-tenure and mid-term transfer is also denied on merits. As already observed, the petitioner is deputed at Head Quarters, and therefore, the same is not the transfer as contended by the learned counsel appearing for the petitioner. The very nature of the duties assigned to the Police Department requires the services of the Police Personnel to be rotated as per the requirement by the Head of the District. Respondent no.3, in his affidavit-in-reply/additional affidavit-in-reply, has stated that there are complaints received against the petitioner. There is reference of one crime registered against the petitioner and even the charge-sheet is filed against the petitioner. We do not wish to enter into the said aspect since the proceedings are pending to that effect. Suffice it to say that we do not see any *mala fide* or arbitrary exercise of powers by

respondent no.3.

17. We concur with the reasons assigned and the conclusions reached by the MAT, hence, the Writ Petition stands rejected.

Sd/-

[SANGITRAO S.PATIL]
JUDGE

Sd/-

[S.S.SHINDE]
JUDGE