

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5320 OF 2018

Ashok s/o Rangnath Barde,
Age : 45 years, Occu. Service
as Police Head Constable,
Kannad (Rural), R/o Aurangabad

PETITIONER

VERSUS

1. The State of Maharashtra,
through its Secretary,
Home Department, M.S.
Mantralaya, Mumbai
2. The Superintendent of Police,
Aurangabad (Rural),
Aurangabad
3. The Inspector General of Police,
Aurangabad Range, Aurangabad

RESPONDENTS

Mr. Menezes Joslyn A, Advocate holding for
Mr. P.S. Paranjape, Advocate for the petitioner
Mr. S.B. Joshi, A.G.P. for the respondents/State

**CORAM : S.V. GANGAPURWALA AND
R.G. AVACHAT, JJ.**

RESERVED ON : 23rd OCTOBER, 2018
PRONOUNCED ON : 22nd DECEMBER, 2018

ORDER (PER : R.G. AVACHAT, J.):

Assailed in this writ petition is the order
dated 22nd December, 2017, passed by the Maharashtra

Administrative Tribunal, Mumbai, Bench at Aurangabad ("MAT", for short), dismissing Original Application (O.A.) No.465 of 2017, filed by the petitioner challenging the order of his transfer from Aurangabad to Kannad.

FACTS OF THE CASE :

2. The petitioner joined as a Constable in police service, namely State Reserve Police Force in 1994. He came to be transferred to Aurangabad (Rural) Police Force. He was promoted as Head Constable in March, 2014. He was serving with Local Crime Branch (L.C.B.). He then came to be transferred to Traffic Branch in June, 2016, whereas in May, 2017, he was transferred to Kannad.

3. Heard Mr. Menezes Joslyn A., the learned counsel for the petitioner and the learned A.G.P., representing the respondents/State.

SUBMISSIONS :

4. Learned counsel for the petitioner would submit that in June, 2016, the petitioner was transferred from L.C.B. to Traffic Branch. Since he was transferred to Kannad within a year thereafter, it is a midterm

transfer. Learned counsel took us through relevant provisions of Section 22A of the Maharashtra Police Act, 1951 ("Act", for short) so as to contend that the petitioner's midterm transfer was in breach of the said provisions. The conditions, which were required to be fulfilled before effecting midterm transfer, have not been complied with. Learned counsel also took us through the reply filed by respondent No.2 to the O.A. According to learned counsel, the averments in the reply would indicate that the petitioner's transfer was effected as there were serious complaints against him that would have led to creation of law and order problem. According to learned counsel, respondent No.2 usurped the powers, which were not vested in him. According to learned counsel, the reply to the O.A. contained the grounds enumerated in Section 22 (N) of the Act, to effect transfer.

. It was further submitted on behalf of the petitioner that it is the Chief Minister and none else, who is competent to effect midterm/ mid-tenure transfer. The MAT found petitioner's transfer to have been effected for administrative reason. The reply to the O.A. is silent to state "administrative exigency" as a

ground for transfer of the petitioner. Learned counsel for the petitioner would ultimately urge for setting aside the impugned orders namely the order dismissing his O.A. and the order of his transfer from Aurangabad to Kannad.

5. Learned A.G.P., per contra, would submit that there were serious complaints against the petitioner, which would have led to creation of law and order problem. Learned A.G.P. also took us through the provisions of Section 22 (N) (1) and (2) of the Act to contend that police personnel, in exceptional cases, in the public interest and on account of administrative exigencies, could be transferred midterm. According to learned A.G.P., the petitioner had been serving at Aurangabad for about ten years immediately before the impugned order of his transfer. As such, the petitioner was overdue for transfer. Learned A.G.P. reiterated the reason given by the MAT for rejection of the O.A.

6. The Apex Court, in the case of **Somesh Tiwari Vs. Union of India and others (2009) 2 SCC 592**, observed thus :

"The order of transfer is an administrative

order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is provide..."

The Apex Court further observed that when the transferred officer desires to challenge the transfer, he must first report at the transferred place and then take up the challenge to the transfer order.

7. Admittedly, the petitioner in the present case, has reported at his transferred place. Undoubtedly, the petitioner had been serving at Aurangabad for little over eight years immediately before the impugned order of transfer. He had served with more than one branches of the Police Department at Aurangabad. Lastly before the impugned order of transfer, he was serving with Traffic branch pursuant to his transfer from L.C.B. in June, 2016.

8. A short question that falls for consideration is whether the impugned order could be termed to be a mid-tenure/midterm transfer and whether respondent No.2 was justified in effecting the same ?

9. Pursuant to the directions given by the Apex Court in the case of ***Prakash Singh and others Vs. Union of India and others, (2006) 8 SCC 1***, the Act came to be amended for providing a Police Establishment Board in each State for deciding all transfers, postings, promotions and other service related matters of the members of the Police Department. Before deciding the issue involved in this writ petition, it is necessary to have a glance at the relevant provisions of the Act.

10. Section 2(6A) of the Act defines the term "General Transfer" as under :

"General Transfer means posting of police personnel in police force from one post, office or Department to another post, office or department in the month of April and May of every year after completion of normal tenure as mentioned in sub-section (1) of Section 22(N).

Section 2(6B) defines the term "Mid-term Transfer" as under :

"Mid-term Transfer means transfer of Police Personnel in Police Force other than the General transfers."

Section 2 (8) defines the term "Place" as under :

"Place includes a building, a tent, a booth or other erection, whether permanent or temporary, or any area whether enclosed or open."

Section 2 (11B) defines the term "Post", as under :

"Post means any post created on the establishment of Director General and Inspector General of Police and includes the posts assigned for police personnel on State or Central deputation"

. Section 22J-2 authorizes the Police Establishment Board at District Level to decide all transfers, postings of Police Personnel to the rank of Police Inspector within the district Police Force.

. For police constabulary, a normal tenure is of five years at one place of posting. The Competent Authority for general transfer of the members of the constabulary is Police Establishment Board at District level. The Board is comprised of Superintendent of Police, Seniormost Additional Superintendent of Police and the Deputy Superintendent of Police (Home). The State Government is vested with the power to transfer any police personnel prior to the completion of his normal tenure, if, -

- (a) disciplinary proceedings are instituted or contemplated against the Police Personnel; or
- (b) the Police Personnel is convicted by a court of law; or

- (c) there are allegations of corruption against the Police Personnel; or
- (d) the Police Personnel is otherwise incapacitated from discharging his responsibility; or
- (e) the Police Personnel is guilty of dereliction of duty.

Whereas in exceptional cases, in public interest and on account of administrative exigencies, the Competent Authority i.e. the Police Establishment Board is authorized to make midterm transfer of any police personnel of the police force.

. Proviso to Section 22N (2) states that in case of serious complaint, irregularity, law and order problem, the highest Competent Authority can make the transfer of any police personnel without any recommendation of the concerned Police Establishment Board.

. The aforesaid provisions would undoubtedly indicate that it is concerned Police Establishment Board, which has been authorized to effect the general transfers. In exceptional cases, it has also been authorized to make midterm transfers in public interest and on account of administrative exigencies.

11. The impugned transfer order was issued by the Superintendent of Police, Aurangabad (Rural) on 31st May, 2017. It records that eight police personnel named in the order were being transferred on account of irregularity, law and order problem and for administrative reasons. The order is conspicuously silent to state that the police personnel were being transferred in annual general transfers. The affidavit filed on behalf of the respondents before the MAT is also silent to state that the transfer was a general transfer. The MAT was, therefore, not justified to hold that the petitioner was transferred in annual general transfer.

12. Be that as it may, the order of transfer records the petitioner to have been transferred for administrative reasons and law and order. It is true that the transfer order has been issued by the Superintendent of Police, Aurangabad. The order, however, records that the transfers were effected by the Police Establishment Board at District level. The transfer on the ground of law and order is nothing short of a transfer on account of having been effectuated in

public interest. The term "public interest" would take into its fold law and order. The transfer was also said to have been effected for administrative reasons. Whereas Section 22N (2) of the Act speaks of midterm transfer on account of administrative exigencies. Learned counsel for the petitioner tried to make distinction between the terms "administrative reasons" and "administrative exigencies". In the view of learned counsel, "administrative exigency" indicates not on general administrative ground but for eminent administrative reasons. The transfer order has been passed in vernacular language. In the affidavit-in-reply to the petition, it has been stated that some serious complaints were received against the petitioner and others. The transfer has, therefore, been made. It would be nothing short of an administrative exigency.

13. By virtue of Section 22N(2), the midterm transfer on account of administrative exigency and in public interest can be made by the Competent Authority. In the very Section, the Competent Authority has been described to be the Police Establishment Board at District level. True, Proviso to the Section spells that in case of any serious complaint, irregularity, law

and order problem, the highest Competent Authority can make the transfer of any police personnel without any recommendation of the concerned Police Establishment Board. If the submission made by the learned counsel for the petitioner is accepted that it is only the highest Competent Authority i.e. the Chief Minister, who could effect the transfer on the aforesaid grounds, then Section 22N(2) would become a dead letter. Proviso can never override the main provision. Normally, function of proviso is to except something out of the enactment or to qualify something enacted therein, but for the proviso would be within purview of the enactment. Proper functioning of the proviso is that it qualifies generality of the main enactment by providing exception. The provision with proviso will have to be read as a whole harmoniously in a manner that both co-exist and none of it becomes a dead letter. When one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject-matter of the proviso. The proper function of a proviso is to except and to deal with a case which would otherwise fall within the general language of the main enactment and its effect is confined to that case. As a general rule,

a proviso is added to an enactment to qualify or create an exception to what is in the enactment, and ordinarily, a proviso is not interpreted as stating a general rule. Normally, a proviso does not travel beyond the provision to which it is a proviso. A proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other.

14. Literal interpretation of the Proviso would indicate that the Chief Minister has also been vested with a power to effect transfers on the grounds contained in the Proviso, without reference to Police Establishment Board or other Competent Authorities described therein.

15. Since the record indicates the petitioner to have been transferred by the Competent Authority and for the reasons mentioned in Section 22N(2) of the Act, the impugned transfer cannot be faulted with.

16. For one more reason, we are not inclined to interfere with the impugned order. Admittedly, the petitioner had been serving at Aurangabad since 2008 to

the date of his transfer i.e. 31st May, 2017. The petitioner, thus, had been serving at Aurangabad for little over eight years. For constabulary, a normal tenure is of five years at one place of posting. The term "place of posting" has not been defined in the Act. True, if the terms "place" and "post" defined in the Act are taken in conjunction and interpreted with reference to the term "General Transfer", it may cover the transfer from one post, office or Department to another post, office or Department at same station. If such an interpretation is resorted to, it may lead to absurd results, as has happened in the case in hand. The petitioner was first transferred to Aurangabad (Rural) Police Force in the year 2008. In 2014, he was promoted as Head Constable in the very office. On his request, he was transferred to the Traffic branch, Aurangabad in June, 2016. With reference to the aforesaid interpretation, the petitioner wanted to contend that his five year tenure envisaged under Section 22N(1)(b) would commence from the day he joined his duties with the Traffic Branch in June, 2016, meaning thereby, he would have become due for transfer in June, 2021. If the submission advanced by the learned counsel for the petitioner is accepted, it would stymie desire of other

police personnel serving in Moffusil, to come to the district headquarters on transfer. 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.

17. The Division Bench of this Court in the case of ***Shri Rajendra Shankar Kalal Vs. The State of Maharashtra and others (Writ Petition No.8898 of 2010, decided on 30th November, 2010)***, observed that in case of transfers at the same station or in the same office, the Court has already held that such internal transfers within the same office or at the same Headquarter should not be treated as transfers in the normal meaning and these are only internal postings for convenience of the Administration.

. What has been guaranteed to a Government officer is a minimum tenure at a particular station/ Headquarter. The Court has suggested to the State Government to examine the issue of amending the Act.

18. In view of the above, we are of the view that the petitioner had served at Aurangabad beyond his term

of five years, was run out. He was overdue for transfer from Aurangabad. Moreover, on account of administrative reasons and law and order problem, the petitioner has been transferred. He was transferred in May, 2017. The said transfer also takes a colour of general transfer, although the respondent has not come with the said case. The power under Article 226 of the Constitution of India is discretionary. In the aforesaid factual backdrop, we are not inclined to interfere with the impugned order. The writ petition, therefore, fails.

19. In the result, the writ petition is dismissed. No costs.

[R.G. AVACHAT]
JUDGE

[S.V. GANGAPURWALA]
JUDGE