

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

**REVIEW APPLICATION NO.48 OF 2019
IN
WRIT PETITION NO.5320 OF 2018**

Ashok s/o. Rangnath Barde,
Age : 45 years,
Occ. Service as police Head
Constable, Kannad (Rural)
r/o. Aurangabad

..Applicant

Vs.

1. The State of Maharashtra,
through its Secretary,
Home Department, Mantralaya,
Mumbai – 400 032
 2. The Superintendent of Police,
Aurangabad [Rural], Aurangabad
 3. The Inspector General of Police,
Aurangabad Range, Aurangabad
- ..Respondents

Mr. Menezes Joslyn, Advocate h/f. Mr.P.S.Paranjape,
Advocate for applicant

Mr. P.K.Lakhotiya, AGP for respondents

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

**RESERVED ON : JUNE 14, 2019
PRONOUNCED ON : JULY 05, 2019**

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

The applicant (petitioner in decided Writ Petition No.5320 of 2018) has sought for review of the judgment and order dated 22.12.2018 passed in the Writ Petition (No.5320 of 2018).

RECAP OF FACTS :-

2. The applicant, who is original petitioner in Writ Petition No.5320 of 2018, is a member of constabulary. He was transferred from Aurangabad to Kannad (Rural) Police Station vide order dated 31.05.2017 issued by respondent no.2 – Superintendent of Police, Aurangabad. The applicant took exception to the said transfer order before Maharashtra Administrative Tribunal. After having been unsuccessful before the Tribunal, he preferred Writ Petition, being Writ Petition No.5320 of 2018.

It was the case of the applicant before the Tribunal and this Court as well, that the order of transfer smacks of *mala fides*. He was not due for transfer. The Police Establishment Board (P.E.B.) was the authority to effect transfers. The applicant was ostensibly transferred on the ground of administrative exigencies and serious complaints. The Chief Minister, being highest competent authority, was the only authority competent to issue/make transfer on such grounds. The Tribunal found it to be a case of general transfer. As the applicant had been serving at Aurangabad for little over eight years when he came to be transferred in May, 2017, this Court, although agreed with the finding recorded by the Tribunal, found it to be a case of mid-term transfer effected on the ground of public interest and administrative exigencies.

3. The applicant has sought for review of the order dated 22.12.2018 on the following grounds :-

- (i) It is not clear from the order, whether the Court found it to be a case of mid-term or general transfer.
- (ii) The order transferring the applicant was passed by respondent no.2 (Superintendent of Police, Aurangabad) and not by P.E.B.
- (iii) The Chief Minister, being highest competent authority, was only the authority competent to make transfer on the grounds mentioned in the transfer order.
- (iv) The applicant had neither been subjected to any departmental enquiry nor had he ever been served with a notice informing the allegations in the complaint, on the basis of which the applicant came to be transferred.

4. We have heard Mr.Menezes Joslyn, learned Counsel for the applicant and Mr.P.K.Lakhotiya,

learned AGP for the respondents. We have also perused the application for review, the documents annexed thereto and the orders passed by the Tribunal in some original applications.

5. The applicant was transferred from Aurangabad to Kannad (Rural) Police Station vide order dated 31.05.2017. The order of transfer records the applicant to have been transferred for administrative reasons and law and order. The transfer order has been issued by respondent no.2 – Superintendent of Police, Aurangabad. It was submitted on behalf of the respondents all along that it was a mid-term transfer. Therefore, there was no warrant for us to conclude it to be a case of general transfer. Our observations in the judgment that the order of transfer also takes a colour of general transfer, were in the nature of passing observations. Moreover, the observations in paragraphs 16 and 17 of our order shall, therefore, have no binding force. The judgment is self-speaking and does not warrant

any clarification. In so many words, we have observed that the Tribunal was not justified to hold that the applicant was transferred in annual general transfers.

6. Learned Counsel for the applicant would submit that the transfer order has, in fact, been passed by respondent no.2 and not by P.E.B. In support of his contentions, learned Counsel took us through some orders passed by the Tribunal in Original Applications during the relevant time. Learned Counsel meant to say that those orders would indicate that even before and after the present applicant was transferred, no P.E.B. was formed to effect transfer of other members of constabulary. Learned Counsel would further submit that had really the transfer been effected by P.E.B., the minutes of meeting of P.E.B. would have been forthcoming.

True, the transfer order has been issued by respondent no.2—Superintendent of Police, Aurangabad. The transfer order, however, records as under :-

" पोलीस अधिक्षक स्तरावरील पोलीस आस्थापना मंडळास प्रदान केलेल्या अधिकारानुसार, गृह विभाग शासन निर्णय क्र.टीआरएन-०११०/प्रक्र/४८८/पोल-५ब दि.२३.४.२०१० नुसार व पोलीस आस्थापना मंडळाने प्रशासकीय तसेच कायदा व सुव्यस्थेच्या दृष्टिकोनातून विचार करून, खालील नमूद पोलीस कर्मचाऱ्यांच्या अनियमितता व कायदा व सुव्यस्थेच्या प्रश्नाच्या अनुषंगाने बदल्या करण्याबाबत दिलेल्या मान्यतेनुसार, पोलीस कर्मचाऱ्यांच्या प्रशासकीय कारणास्तव त्यांच्या नावासमोर दर्शविलेल्या ठिकाणी तात्काळ प्रभावाने बदल्या करण्यात येत आहे."

7. As stated above, the transfer order itself records that the P.E.B. had approved the proposal of transfers of the applicant and seven others on the ground of irregularity and law and order. The order also records that the transfers have been effected for administrative reasons. The P.E.B. is comprised of Superintendent of Police, respondent no.2, Senior-most Additional Superintendent of Police and Deputy Superintendent of Police (Home). These other two police officers are sub-ordinate to respondent no.2. It needs no mention that the members of the board or Committee can make decisions by circulation as well.

Since the order of transfer of the applicant itself records that the proposal of the transfer had been approved by the P.E.B., we have no reason to hold or observe other way wrong.

8. It was also the contention of learned Counsel for the applicant that the transfer of the applicant on the grounds of which it is stated to have been effected, could have been effected by the Chief Minister alone and none else. Learned Counsel meant to say that the proviso of sub-section (2) of Section 22N of the Maharashtra Police Act ("the Act", for short) states that highest competent authority i.e. Chief Minister can make transfer of any police personnel without recommendation of the concerned establishment board in the case of serious complaint, irregularity and law and order problem. This contention was very much there before us, while deciding the Writ Petition. The said contention has been addressed by us in paragraphs 13 and 14 of the judgment under review.

9. At the cost of repetition, it needs to be stated that by virtue of Section 22N(2) of the Act, in exceptional cases, in public interest and on account of administrative exigencies, the competent authority can make mid-term transfer of any personnel of police force. Needless to mention that for police personnel upto the rank of Police Inspector, for transfer within the District, the competent authority would be the Police Establishment Board (P.E.B.) of District level. The transfer order indicates that it has been effected for the reasons – irregularity, law and order and for administrative reasons. True, Section 22N(2) contains administrative exigencies and not administrative reasons. Learned Counsel for the applicant meant to say that the word 'exigency' denotes an urgent situation or extreme urgency. In view of the submissions of learned Counsel for the applicant, we have referred to the dictionary meaning of the word 'exigency' to find it to mean – the demand or requirement of a situation. We have already

observed in our judgment that the term 'law and order' gets covered by the clause 'public interest'. What proviso to Section 22N(2) envisages that the highest competent authority i.e. the Chief Minister has been vested with plenary power of effecting transfer of any police personnel on account of serious complaint, irregularity and law and order problem without recommendation of the concerned P.E.B. The proviso only states that there need not be any recommendation from P.E.B. for issuance of transfer order by highest competent authority on the ground stated in the proviso. Section 22N(2) authorises the competent authority (P.E.B.) to effect mid-term transfer in exceptional cases, in public interest and on account of administrative exigencies and since the transfer order has been effected in exercise of the said power, we do not find any substance in the submission made by learned Counsel that the Chief Minister was the only competent authority to make transfer on the ground on which the

applicant is shown to have been transferred.

10. Learned Counsel for the applicant would further submit that the applicant is stated to have been transferred on account of there being serious complaints against him. Learned Counsel meant to say that before effecting transfer of the applicant on such ground, the complaints should have been inquired into. Learned Counsel would further submit that the applicant had neither been subjected to any departmental enquiry nor had he ever been served with a copy of complaint or was ever called upon to offer his explanation. According to learned Counsel, in view of the observations of the Hon'ble Apex Court in the case of **Somesh Tiwari Vs. Union of India and ors., (2009)2 SCC 592**, effecting transfer on the ground of complaint is punitive in nature. Before effecting transfer, it should have been preceded by an enquiry into the complaint and if found substance therein, then only the applicant should have been

transferred.

11. We have perused the judgment of the Hon'ble Apex Court in the case of **Somesh Tiwari (Supra)**. The issue therein was, whether, while quashing the order of transfer against the appellant therein, it was correctly directed that he would not be entitled for salary for the period during which he remained absent from duty without joining of his transferred place. The facts of the case would further indicate that there were complaints against the appellant on caste bias. The complaints were anonymous. Those were inquired into. No substance was found therein.

It needs no mention that it is not in each and every case, the complaint has to be inquired into before effecting transfer on the ground of complaint. It would depend upon subjective satisfaction of the competent authority authorised to effect the transfer. It is, therefore, not trite proposition of

law.

12. It is reiterated that it had been specifically contended in the affidavit filed before the Tribunal that there were complaints against the applicant. The applicant has been transferred on account of public interest, irregularity and administrative exigency. We have no reason to doubt the statement made on affidavit. The applicant has failed to make out a case against respondent no.2 of mala fides or an axe-to-grind against the applicant. It was submitted by learned Counsel for the applicant that six of the members of constabulary, who had been transferred along with the applicant, have been brought back to Aurangabad by respondent no.2. The applicant did not find favour of respondent no.2 since he challenged the order of transfer and did not meet respondent no.2.

13. We are not inclined to go into

extraneous reasons sought to be made out by the applicant. Suffice it to say that no case for review of the judgment and order dated 22.12.2018 in Writ Petition No.5320 of 2018 is made out by the applicant.

14. The application fails and therefore, stands dismissed.

[R.G. AVACHAT, J.]

[S.V. GANGAPURWALA, J.]

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