

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2222 OF 2021

Mr.Nitin Pandurang Bhoyar	}	Petitioner
Versus		
The Director General and	}	
Inspector General of Police	}	
(M.S.), Mumbai and Ors.	}	Respondents

Ms. Anamika Malhotra i/b. Mr. Parth Shah for the petitioner.

Ms. Rina Salunkhe, AGP for the respondents.

**CORAM :- DIPANKAR DATTA, CJ &
G. S. KULKARNI, J.**

DATE :- JULY 12, 2021

PC :-

1. The challenge in this writ petition, under Articles 226 and 227 of the Constitution of India, is to a judgment and order dated 12th May 2021 of a Judicial Member of the Maharashtra Administrative Tribunal, Mumbai Bench, Mumbai (hereafter "the Tribunal" for short) dismissing the petitioner's original application bearing O.A. No. 791 of 2020 and in the process upholding the order under challenge therein, being an order of transfer dated 10th December 2020. By such order, the petitioner was transferred from the post of Deputy Superintendent of Police, Anti-Corruption Bureau, Pune to the post of Police Inspector, Police Training Centre, Jalna.

2. We consider it appropriate to notice that on 9th January 2020, the petitioner was transferred from the post of Deputy Superintendent of Police, Anti-Corruption Bureau, Pune to the State Intelligence Department, whereupon such order of transfer was challenged by the petitioner before the Tribunal in an earlier original application, bearing O.A. No. 60 of 2020. The grounds of challenge were (i) the order of transfer suffers from lack of competence, inasmuch as, the petitioner being an officer in the rank of Deputy Superintendent of Police, the competent authority to approve such transfer was the Home Minister based on a recommendation to be made by the Police Establishment Board-1, whereas the recommendation had been made by the Police Establishment Board-2 and there was no approval of the Home Minister; and (ii) there was no public interest involved in ordering the impugned transfer.

3. O.A. No. 60 of 2020 was considered by the same Judicial Member, who has passed the order under challenge in this writ petition. For the reasons recorded in a judgment and order dated 30th June 2020, the Tribunal rejected the contention of the petitioner that there was no public interest involved in transferring him to the State Intelligence Department; however, the original application succeeded because of the Tribunal's acceptance of the first contention of the petitioner that recommendation of the Police Establishment Board-1 was lacking and also that the Home Minister's approval had not been obtained prior to issuance of the impugned order dated 9th January 2020. As a consequence, the impugned transfer order dated 9th January

2020 was quashed and the petitioner directed to be reinstated on the post of Deputy Superintendent of Police, Anti-Corruption Bureau. It is not in dispute that the decision of the Tribunal dated 30th June 2020 was accepted by the respondents in O.A. No. 60 of 2020, resulting in compliance of the directions contained therein.

4. Insofar as the further order of transfer dated 10th December 2020 is concerned, which has been passed after disposal of O.A. No. 60 of 2020, it was urged on behalf of the petitioner before the Tribunal that the same was a product of *mala fide*, having been issued with a revengeful attitude to displace the petitioner from the Anti-Corruption Bureau, Pune at any cost after the earlier attempt came to be spurned by the Tribunal. Two circulars dated 7th October 2016 and 18th November 2017 were referred to, and it was the petitioner's contention that the order of transfer was issued in violation thereof. It was also contended that there was no public interest involved in transferring the petitioner from Pune to Jalna.

5. The Tribunal considered the contentions advanced on behalf of the parties and proceeded to decline interference upon rejecting the contentions as urged on behalf of the petitioner. The outcome of such consideration has been noted by us at the beginning of this order.

6. Ms. Malhotra, learned advocate for the petitioner, has assiduously argued that the Tribunal fell in error in not accepting the petitioner's contentions.

7. Ms. Malhotra contends that the respondents having suffered an adverse decision of the Tribunal in the first round of litigation, whereby the earlier order of transfer was set aside, they wasted no time to subject the petitioner to transfer once again without any genuine administrative reason. She has drawn our attention to the order of transfer to demonstrate that it does not contain any reason. According to her, such act on the part of the respondents exposes an attitude of teaching the petitioner a lesson for not having gracefully accepted the order dated 9th January 2020. This, she contends, demonstrates malice in law as well as malice in fact, which the Tribunal failed to correct by its intervention. Next, it is contended that there has been no dereliction of duty on the petitioner's part and the order of transfer has been used as a weapon of punishment against him for having approached the Tribunal and succeeded before it. Further, she contends that there is no public interest involved which could have entailed a mid-term transfer resulting in the petitioner being shunted out of the Anti-Corruption Bureau. That apart, she also contends that the transfer has been ordered in violation of the circulars dated 7th October 2016 and 18th November 2017, which required the respondents to record the statement of the petitioner in course of a preliminary inquiry that was conducted upon receipt of certain complaints against him.

8. Based on the aforesaid contentions, Ms. Malhotra prays that the judgment and order under challenge deserves to be set aside and the petitioner posted back to the Anti-Corruption Bureau.

9. We have not considered it necessary to call upon Ms.Salunkhe, learned AGP for the respondents to answer the contentions urged by the petitioner.

10. Before we consider the contentions urged by Ms. Malhotra, it would be appropriate to notice section 22N, which has been introduced in the Maharashtra Police Act, 1951 (hereafter "the Act of 1951" for short) by an amendment. The said provision, for facility of appreciation, is quoted herein below:

"22N. (1) Any Police Personnel in the Police Force shall have a normal tenure of two years on one post or office, subject to the promotion or superannuation. The Competent Authority for the general transfer shall be as follows, namely :—

Police Personnel	Competent Authority
(a) Officers of the Indian Police Service	... Chief Minister ;
(b) Maharashtra Police Service Officers of and above the rank of Deputy Superintendent of Police	... Home Minister ;
(c) Officers upto Police Inspector	(a) Police Establishment Board No.2. (b) Police Establishment Board at Range Level. (c) Police Establishment Board at Commissionerate Level :

Provided that, the State Government may 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.

(2) In addition to the grounds mentioned in sub-section (1), in exceptional cases, in public interest and on account of administrative exigencies, the Competent Authority shall make mid-term transfer of any Police Personnel of the Police Force :

Provided that, the Competent Authority may, by general or special order, delegate its powers under this sub-section to any of its subordinate authority.

Explanation.— For the purposes of this sub-section, the expression “ Competent Authority ” shall mean :—

Police Personnel Competent Authority

- (a) Officers of the ... Chief Minister ;
Indian Police
Service
- (b) Maharashtra ... Home Minister ;
Police Service
Officers of and
above the rank of
Police Sub-
Inspector
- (c) Police Personnel ...Director General and
upto the rank of Inspector General of
Assistant Police Police
Sub-Inspector

11. A bare reading of section 22N would reveal that the same is the repository of power to transfer any police personnel prior to completion of normal tenure as well as in exceptional cases, in public interest and on account of administrative exigencies. Such provision permits the competent authority, as indicated therein, to make mid-term transfer of any police personnel of the police force. We are, therefore, tasked to consider whether the impugned order of transfer was issued in compliance with the terms thereof and whether the Tribunal was justified in declining interference. It is trite, only on limited grounds a transfer order could be interfered with, viz. if it is in breach of mandatory statutory provisions or is the outcome of *mala fide* exercise of power for ulterior motives or collateral purposes.

12. In the present case, the recitals in the order of transfer dated 10th December 2020 reveal a reference to the provisions of section 22N(2) of the Act of 1951. Obviously, in view thereof, the order of transfer is presumed to be one ordered in public interest and on account of administrative exigencies.

13. The Tribunal, in the impugned judgment and order dated 12th May 2021, noticed that the contention of the petitioner that the earlier transfer order dated 9th January 2020 not being in public interest had been considered and negated. Despite such contention being barred by *res judicata*, the Tribunal considered the contention of the petitioner once again. The Tribunal perused the records and returned a

finding that the petitioner was recommended for transfer by the Police Establishment Board-1 constituted in terms of section 22C of the Act of 1951; that the recommendation of the Police Establishment Board-1 was duly approved by the Home Minister, being the competent authority for ordering transfer of the petitioner; and that the continuation of the petitioner in the Anti-Corruption Bureau was found undesirable in view of the preliminary inquiry report (default report) dated 13th November 2019. The relevant passages from the judgment and order of the Tribunal read as follows: -

"9. Since the same issue is now again raised in this O.A., I would like to deal with the same in some details. In this behalf, the perusal of record reveals that while Applicant was serving as Deputy Superintendent of Police, ACB, Shri Rajesh Bansode, Deputy Superintendent of Police, ACB was directed to make preliminary enquiry in the matter of complaints lodged by one Shri Rajesh M. Taras on 04.09.2019 and 23.09.2019. It was transpired that Applicant had friendly relations with Shri Taras and only to favour Shri Taras, the Applicant misused his position as Deputy Superintendent of Police by interfering in private monetary dispute between Shri Taras and Shri Vijay Date. Shri Rajesh Bansode accordingly submitted preliminary enquiry report on 30.11.2019 to Director General, ACB (Page Nos.176 to 181 of P.B.). The conclusion recorded by him is as follows :-

.....(extracted in vernacular)

13. Thus, the perusal of minutes of PEB clearly spells that PEB-1 was satisfied with the preliminary enquiry report and there was *prima-facie* material attributing certain misconduct to the Applicant and on the basis of it, he was transferred. Where the competent authority on the basis of preliminary enquiry report satisfied about the existence of reasons to transfer the Applicant, such satisfaction of PEB can hardly be questioned unless it is shown tainted with *malafides*. In the present case, no such malice can be possibly attributed to the Respondents. Needless to mention

that existence of reasons is a matter capable of objective verification, whereas satisfaction as to reason is a matter of subjective satisfaction. Once the test of existence is satisfied, the subjectivity of satisfaction cannot be gone into by the Tribunal unless it is a case of *malafide* exercise of power and Tribunal cannot substitute its opinion for that of competent authority.

.....

15. In the present case, the competent authority has formed the opinion that the Applicant has unnecessarily investigated private financial dispute which was in between Shri Taras and Shri Date but only to favour Shri Taras, the Applicant interfered in the said matter and misused his position in ACB. In other words, Applicant's continuation in ACB was found undesirable rather objectionable, and therefore, to maintain probity in the administration as well as to maintain the image of Department, the transfer of the Applicant was found inevitable, which can hardly be questioned in judicial review."

14. It is true that the reasons for which the petitioner was initially transferred by the order dated 9th January 2020 and subsequently by the order dated 10th December 2020 are not at variance; incidentally, the same reasons that persuaded the Police Establishment Board-2 to recommend the petitioner's transfer equally weighed with the Police Establishment Board-1 to similarly recommend. In the first round of litigation before the Tribunal, the challenge of the petitioner succeeded only because recommendation of the Police Establishment Board-1 was non-existent and approval of the competent authority, i.e., the Home Minister, not obtained. However, omission to place the matter before the Police Establishment Board-1 and to obtain the approval of the Home Minister were flaws, which did not affect the merits of the matter that the petitioner was liable to be transferred in view of his conduct

being found not to be above board in course of a preliminary inquiry. It could not have been and has rightly not been contended by Ms. Malhotra that upon the decision of the Tribunal in the first round of litigation tilting in favour of the petitioner, the respondents were not empowered to follow the right course, as mandated by the Act of 1951 and to issue a fresh transfer order.

15. For the reasons that the Tribunal assigned while disposing of Original Application No. 60 of 2020 as well as dismissing Original Application No. 791 of 2020, we need to now examine the same in the light of section 22N(2) of the Act of 1951.

16. As we have noticed above, section 22N(2) vests wide ranging powers for a transfer to be ordered, even mid-term, in public interest and on account of administrative exigencies. The order of transfer refers to section 22N(2), which is the source of power. Failure to give specific reason for transfer, as contended by Ms. Malhotra, cannot give rise to the conclusion of *mala fide*, for, such a finding can only be made on sufficient reliable evidence. When *mala fide* exercise of power *qua* a transfer order is alleged, the procedure that the Court ought to adopt for determining whether there is any worth in such allegation is to look into the records without, however, embarking upon a roving inquiry. No such evidence from the side of the petitioner is before us. On the contrary, it is evident that the Tribunal looked into the records and has returned a finding that the petitioner's continuation in the Anti-Corruption Bureau was considered undesirable. Any

member of the police force who is attached to the Anti-Corruption Bureau, is required to maintain a conduct that is free from blemish and is above board which, according to the preliminary inquiry report, the petitioner failed to maintain. The records also revealed that in a private financial dispute between two private parties, the petitioner went out of his way to favour a party to such dispute. That was considered by the Police Establishment Board-1 to be sufficient to warrant his transfer out of the Anti-Corruption Bureau resulting in a recommendation in that regard; and such recommendation having been placed before the Home Minister, he concurred therewith. Reliance placed by the Tribunal in this regard on the decision of the Supreme Court in the case of ***Union of India and Ors. vs. Janardhan Debanath and Ors.*** reported in (2004) 4 SCC 245, appears to be apt. In such decision, the Court held that upon receipt of a complaint of misconduct, an employee can be transferred without holding an elaborate inquiry.

17. Since Ms. Malhotra has alleged malice, we have perused the averments in the original application under several subparagraphs of paragraph 7 titled 'Grounds'. Apart from alleging that the impugned order of transfer, *inter alia*, is *mala fide* and that the same was issued with revengeful attitude, there is no other averment of worth. While it is always easy to allege *mala fide*, it is difficult to prove it. The same cannot be held as proved based on assumption, speculation or suspicion. The party alleging must plead and prove that the transfer order stands vitiated due to *mala fide* exercise of power. We

are *ad idem* with the Tribunal that in the absence of the necessary materials and particulars, *mala fide* cannot be attributed to the respondents.

18. That apart, we have noticed that the petitioner has not, while alleging *mala fide*, included in the array of respondents any of the members constituting the Police Establishment Board-1 as party *eo nomine*. The Court would not examine the allegation of *mala fide* if the person to whom *mala fide* is attributed is before the Court.

19. Once the transfer was in public interest in terms of section 22N, we find ourselves in agreement with the Tribunal that omission and/or failure to comply with the terms of the circulars dated 7th October 2016 and 18th November 2017 do not render the impugned action vulnerable. We would hasten to add, relying on the decision of the Supreme Court in ***Union of India vs. S.L. Abbas***, reported in (1993) 4 SCC 357, that the circulars contain executive instructions which are in the nature of guidelines but such guidelines do not confer any legally enforceable right.

20. In view of the foregoing discussion, we find no reason to entertain the writ petition. The judgment and order of the Tribunal under challenge is upheld. The writ petition stands dismissed. There shall, however, be no order as to costs.

SALUNKE
J V

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(G. S. KULKARNI, J.)

(CHIEF JUSTICE)