

Vidya Amin

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

WRIT PETITION NO. 5614 OF 2021

Sachin Ashok Patil ... Petitioner
VS.
State of Maharashtra & Ors. ... Respondents

Mr. S.C. Naidu a/w. Mr. Vishwajeet Mohite, Mr. Sandeep Dere, Mr. Sidhharth Kapre, Ms. Pooja Mankoji, Mr. Dipak Jadhav and Ms. Simran Mehta for the petitioner.

Mr. P.P. Kakade, GP a/w. Mr. B.V. Samant, AGP for the State.

Mr. A.M. Saraogi a/w. Mr. Vaibhav Ugle, Mr. Yogesh Birajdar and Mr. Vikas Shomawansi for respondent no. 3.

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

DATE :- SEPTEMBER 20, 2021

PC :-

1. The petitioner is presently the incumbent Superintendent of Police, Nashik Rural. By an order dated September 9, 2021, the petitioner has been transferred to the post of Deputy Commissioner, State Intelligence Department, Mumbai. Aggrieved thereby, he has invoked the writ jurisdiction of this Court.

2. It is not in dispute that the petitioner is a member of the Indian Police Service. In terms of the provisions contained in

the Administrative Tribunals Act, 1985, he has challenged the order of transfer before the Central Administrative Tribunal, Mumbai Bench, Mumbai, by filing Original Application No. 1333 of 2021. Having regard to the law laid down in **L. Chandra Kumar Vs. Union of India**, reported in AIR 1997 SC 1125, he can approach this Court only after a decision is given by the Tribunal. However, since the Tribunal presently lacks the requisite quorum due to non-availability of the Administrative Member at Mumbai and the original application of the petitioner is not being heard, coupled with the fact that the petitioner is required to join as Deputy Commissioner at State Intelligence Department, Mumbai, shortly, he seeks urgent relief on this writ petition.

3. In the course of hearing a different writ petition, we have taken judicial notice of the prevailing impasse in the Tribunal. Intervention of the Additional Solicitor General was sought and we have been informed of steps being taken to appoint appropriate number of members so that the Tribunal is made fully functional. However, having regard to the exceptional situation, we propose to consider the grievance expressed by the petitioner.

4. A police officer of the petitioner's rank is allowed a normal tenure of two years at one place of posting. The impugned transfer order has been made prior to the petitioner completing a year's tenure on the post of Superintendent of Police, Nashik Rural. The order under challenge, no doubt, is a mid-term transfer order.

5. Transfers of police personnel are governed by the Maharashtra Police Act, 1951 and in particular Section 22N thereof read with Sections 2(6A) and 2(6B). Section 2(6A) dealing with "General Transfer" means posting of police personnel in the 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 22N. Section 2(6B) providing for "Mid-term Transfer" means transfer of police personnel in the police force other than the General Transfer.

6. In terms of the first proviso to sub-section (1) of Section 22N, the State Government is empowered to transfer any police personnel prior to completion of his normal tenure on any of the five grounds mentioned therein. In addition

thereto, sub-section (2) of Section 22N empowers transfer, prior to completion of normal tenure, in exceptional cases, in public interest and on account of administrative exigencies.

7. Mr. Samant, learned AGP appearing for the State does not dispute that in the present case, sub-section (2) of Section 22N was not attracted but that the transfer of the petitioner has been ordered in view of clause (c) of the proviso. He has produced the relevant file before us together with complaints that have been received by the respondent-State against the petitioner. Such complaints, as per Mr. Samant, contain allegations of corruption against the petitioner.

8. We have meticulously perused both the file as well as the complaints. The Police Establishment Board, which is the statutory authority to recommend transfer, both general and mid-term, does not appear to have referred in the relevant minutes, forming part of its proceedings, to any of the complaints. Reliance has been placed by Mr. Samant on the decision of a coordinate Bench of this Court in **Writ Petition No. 14200 of 2016 (The State of Maharashtra and Anr. vs. Siddharth Krushnarao Kasbe & Anr.)** to contend that

the recommendations of the Police Establishment Board are not required to contain the reasons for the transfer and the subjective satisfaction cannot be interfered with in writ proceedings.

9. We have read the decision in **Siddharth Krushnarao Kasbe** (*supra*). It does not advance the cause of the respondent-State. Even if we regard that law has correctly been laid down therein to the effect that the recommendations of the Police Establishment Board need not contain reasons in support thereof, it has also been held in such decision that the requirement of law would be satisfied if such board "in fact, peruses documents and material in respect of the concerned employee" and that subjective satisfaction arrived at by such board and the transferring authority need not be probed into in details and reasons for arriving at conclusion need not be a matter of judicial scrutiny.

10. As has been observed by us above, perusal of the relevant file does not establish that the Police Establishment Board did at all peruse any of the complaints leading to formation of a subjective satisfaction that the mid-term

transfer of the petitioner on the ground that there are allegations of corruption against him is warranted. On the contrary, what we find is that several police officers were considered for transfer and the Police Establishment Board had recorded "administrative reasons" as the cause for such transfers. Indeed, if a police officer is subjected to a 'General Transfer', assigning "administrative reasons" as the cause for such transfer would suffice. However, once an officer is being subjected to a 'Mid-term Transfer', there ought to be at least one reason of the nature referred to in the proviso to sub-section (1) of Section 22N or any of those in sub-section (2) thereof, other than "administrative reasons", for recommending his transfer; or else, the purpose of the statute providing a normal tenure would be defeated merely on the *ipse dixit* of the Board that an officer should be transferred 'mid-term'. There cannot be a rolled-up consideration of all officers due for 'General Transfer' and those being subjected to a 'Mid-term Transfer', as has been done in the present case.

11. *Prima facie*, we are of the view that the power conferred by the statute has been exercised illegally while ordering the petitioner's transfer.

12. We are conscious that interference at this stage would disturb the chain of transfers. However, administrative inconvenience has to yield to the rule of law. Operation of the order of transfer qua the petitioner is, accordingly, stayed. Such order of stay shall continue till the end of this year. In the meanwhile, the petitioner shall be at liberty to pursue the proceedings before the Tribunal and seek extension of this interim order of stay. Likewise, the respondents shall be at liberty to pray for vacation of this order of stay upon notice to the petitioner.

13. If an approach is made by any of the parties praying for either extension of the interim order and/or for vacation thereof, we hope and trust that the Tribunal shall, upon formation of the requisite quorum, proceed to decide such application that might be presented before it, in accordance with law.

14. We are informed by Mr. Saraogi, learned advocate for respondent no. 3, that by the common order of transfer which is under challenge herein, he has now been posted as Superintendent of Police, Nashik Rural to take charge from the petitioner. It is also informed that he has been continued for

more than 5 (five) years on the post of Deputy Commissioner of Police, V.I.P. Security, Mumbai city, and the interim order of stay would adversely affect his interest. However, since the order transferring the petitioner is *prima facie* illegal, we can do no more than grant a liberty to the respondent no. 3 to seek an appropriate posting by applying before the competent authority without, however, prejudicing his rights and contentions in the original application before the Tribunal. If such application is made, we leave it open to the State Government to consider it in accordance with law.

15. We reiterate that the reasons assigned in support of staying the order of transfer are *prima facie* and the Tribunal shall be free to reach its own conclusion on the basis of the materials placed before it by the parties.

16. The writ petition stands disposed of. No costs.

17. Since we have not invited affidavits from the parties, allegations levelled against the respondents shall not be deemed to have been admitted by them.

(G. S. KULKARNI, J.)

(CHIEF JUSTICE)