

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9444 OF 2022**

Shashank Kisan Khade ...Petitioner
Versus
The State of Maharashtra through Additional ...Respondents
Chief Secretary Home Department & Anr

**WITH
WRIT PETITION NO. 9443 OF 2022**

Rahul Shaul Vanjare ...Petitioner
Versus
The State of Maharashtra through Additional ...Respondents
Chief Secretary Home Department & Anr

SHEPHALI
SANJAY
MORMARE

Digitally signed
by SHEPHALI
SANJAY
MORMARE
Date: 2022.08.17
10:22:42 +0530

Mr Nikesh Wable, for the Petitioner.
Mr MM Pable, AGP , for the Respondent-State.

**CORAM G.S. Patel &
 Gauri Godse, JJ.**
DATED: 12th August 2022

PC:-

1. The Petitions assail an order dated 15th March 2020 (page 70) of the Maharashtra Administrative Tribunal (“MAT”). In Writ Petition No 9444 of 2022, the OA was by a serving Police

Constable. In Writ Petition no. 9443 of 2022, the OA was by a Police Naik.

2. In their respective OAs, the two Petitioners (original applicants) challenged a common transfer order dated 4th August 2021. The transfer order, a copy of which is at page 46, is dated 18th June 2020. The name of the Petitioner in Writ Petition No. 9444 of 2022 (“**Khade**”) is shown at Sr. No. 15. The name of the Petitioner in Writ Petition No. 9443 of 2022 (“**Vanjare**”) is shown at Sr. No. 16. Altogether 16 persons were transferred.

3. We will take facts in turn. Khade, the Applicant in OA No. 549 of 2021, was posted at Crime Branch, Pune City by an order dated 25th July 2019. Before the MAT, he said he was entitled to a tenure of five years at his place of posting i.e. Crime Branch, Pune City by virtue of Section 22N(i)(b) of the Maharashtra Police Act 1951. Yet, by the impugned order of 4th August 2021, the Commissioner of Police, Pune transferred him from the Crime Branch Pune City to the Uttam Nagar Police Station (within the same district) mid-term and mid-tenure. This was on the basis of a default report. Khade challenged that default report in his OA before the MAT.

4. Vanjare, the Petitioner in Writ Petition 9433 of 2022, was posted at as the Police Naik at the Crime Branch, Pune City by an order of 15th May 2019. He made the same claim as Khade. He too was transferred by the order of 4th August 2021. His transfer was to Dattawadi Police Station.

5. The submission before the OA and before us is that these transfers, having been effected mid-term and mid-tenure are impermissible because there is neither public interest nor administrative exigency. The transfers are punitive and are in effect a blemish on the service records of the Petitioners. The Petitioners have no recourse or remedy to set their case before any authority to have any such blemish removed or expunged.

6. Reference is also made to the minutes of the Police Establishment Board or PEB to contend that there was no discussion nor a meaningful consideration showing application of mind to the case of these Petitioners or to establish administrative exigencies. Alleged individual lapses were not discussed. The two Petitioners were simply bundled up with 14 others and moved away from their headquarters.

7. On behalf of the Respondents, it is clarified that in neither case has the headquarters of the Petitioners been changed.

8. It is also pointed out that there is a default report. This transfer of both persons was in the public interest and on account of an administrative exigency. Care was taken to obtain the approvals of the PEB. The transfers were within the Pune Commissionerate itself though to different posts.

9. As far as Khade is concerned, the Additional Commissioner of Police submitted a default report based on confidential information that Khade had close contacts with various persons

involved in illegal activities. The DCP Crime Branch as well as PI Crime Branch by separate letters of 16th July 2021 and 28th June 2021 also recommended Khade's transfer. In Vanjare's case there was similar default report by the ACP, DCP and PI, Crime Branch. These were all on record before the PEB and later before the MAT.

10. It is well settled and requires no repetition that Government service is inherently transferable. A transfer is an incident of Government service. At different levels and in different types of Government service there may be different norms for general transfers, annual general transfers or even mid-term or mid-tenure transfers. As such, there is no legally enforceable or vested right to continue at one particular place or for a particular duration. Police personnel are governed by the Maharashtra Police Act 1951. Section 22(N)(b) of that Act says that the normal tenure for the police constabulary is to be five years at one place of posting. Sub-Section (2) of Section 22(N) says that in exceptional cases, in the public interest and on account of administrative exigencies, a mid-term transfer of any police personnel is permissible.

11. There is no doubt that the transfers were mid-term. It can hardly be denied that the default reports referred to earlier were in fact placed before the PEB. The transfer recommendation was said to be in the public interest and on account of administrative exigencies.

12. At its meeting on 4th August 2021, the PEB considered the default reports. There was a unanimous recommendation for transfer of the Petitioners on the ground of administrative exigency.

13. It is difficult to accept the proposition that an executive or administrative decision of this kind can be questioned before the MAT, let alone in a Writ Petition before us. It is surely within the province of the Government to decide what executive or administrative steps need to be taken to run Government affairs, particularly for the smooth, efficient, transparent, accountable and clean running of public administration. All Government activities would be paralysed if every single transfer, even if said to be in the public interest or on the account of administration exigencies, was to be questioned before the MAT and such administrative orders were to be stopped.

14. The difficulty in the Petitioners' way is that they are unable to point out what in particular is the failure of the decision-making process of the MAT or the PEB. In our writ jurisdiction, and when we are engaged in the exercise of judicial review of administrative action, we would be concerned only with the decision-making process and not the decision itself. When assessing the order of the MAT, this is again a form judicial review and it would need to be pointed out to us that there is a legal infirmity in the order of the MAT. It is not shown to us that the impugned transfer orders were patently or manifestly arbitrary or without any basis at all. Indeed, there was material and it came from the highest levels of the Police Commissionerate. The transfers were not effected merely on an ad

hoc and unreasoned administrative direction by the Commissioner of Police. The default reports were actually placed before the PEB which independently considered these. It is not necessary that the PEB should render what would otherwise technically be a judgment in the form of a legal decision in order to give its reasons. Some reasons are evident and are available on record. Whether what was placed before the PEB did or did not justify the recommendation is a matter of a subjective satisfaction. In other words, the record indicates that there was subjective satisfaction of objective material placed before the PEB. Once this test is accepted, it cannot be argued that the exercise of power is mala fide.

15. The Supreme Court in *Union of India v Janardan Devanath & Ors*¹ held in paragraph 14 that where the allegation made was serious and the conduct attributed was unbecoming, detailed enquiries into misbehaviour would be in the form of disciplinary proceedings. This would not affect the right to institute or effect a transfer. A transfer to a different division is a matter for the Government to consider depending upon administrative exigencies and to solve any problems that may be encountered by the administration. This is not also a case where some anonymous complaint was made. The record indicates quite correctly that there was confidential information or intelligence received on the basis of which the Police Commissionerate made its recommendation.

16. We note further that there can be no question here of an individual having an animus or holding a grudge against the

1 (2004) 5 SCC 245.

Petitioners. The reason is that the recommendations came not from any one individual but from three, all holding high positions: the Additional Commissioner of Police or ACP, the DCP, Crime Branch as well as the PI, Crime Branch.

17. In order to dislodge this and to succeed the Petitioners would have necessarily to show that these actions by all these three persons were indeed mala fide. That is impossible. All the more since these recommendations were not straightaway acted upon, but were placed before PEB for its independent view, review and consideration of the Commissionerate's recommendation.

18. Reliance is placed on a circular dated 8th November 2017 to suggest that no mid-term transfer or mid-tenure transfer is possible. That is not our reading of the circular at all. In fact, correctly read, the circular is against the Petitioners. It makes it clear that the transfers can be effected in exceptional cases, in the public interest and on account of administrative exigencies in a way that interrupts the normal tenure. If the transfer is outside the district, a recommendation of the PEB is required. Technically, therefore, under the present transfer, the recommendation of the PEB was not required at all since both transfers are within the Police Commissionerate in Pune to begin with. We fail to see how this circular is in any way of assistance to the Petitioners.

19. In these circumstances, we do not think there is any substance in either of these Petitions.

20. Both Petitions are dismissed.

21. There will be no order as to costs.

(Gauri Godse, J)

(G. S. Patel, J)