

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1499 OF 2025

Digitally signed
by
HUSENBASHA
RAHAMAN
NADAF
Date: 2025.02.11
17:20:07 +0530

Central Bureau of Investigation, Special Task ...Petitioner
Branch, Bandra East, Mumbai

Versus

Ms. Poonam Shahani ...Respondent

Mr. Kuldeep Patil a/w. Ms. Sanika Joshi & Mr. Muthu Kutti P, Advocates
for Petitioner.

Mr. Vicky A. Nagrani, Advocate for Respondent.

**CORAM: A.S. CHANDURKAR &
M.M. SATHAYE, JJ.**

DATE : 7TH FEBRUARY 2025

P.C. :

1. The Petitioner is challenging the judgment and order dated 15/04/2024 passed by the Central Administrative Tribunal, Mumbai Bench, Mumbai ("the Tribunal", in short) in Original Application No. 339 of 2022. By the said impugned order, the said original application filed by present Respondent is allowed, thereby holding that the transfer of the Respondent was punitive and the order of transfer dated 10/02/2022 is set aside.

2. Case of the Respondent / original applicant is as under. She was initially appointed as a senior clerk stenographer with the Petitioner on 01/03/1996. She was staying in her official residence, government quarters at Antophill, Mumbai. In the year 2021, her neighbor one

Mr. Amrish Pandey who was an officer with Anti Corruption Bureau of the Petitioner, caused mental harassment and criminal intimidation to the Respondent and her teenage daughter. That said Mr. Pandey installed a personal CCTV camera outside his staff quarter, without obtaining permission of the Competent Authority and started monitoring and recording the personal and private activities of the Respondent and her teenage daughter. A complaint was lodged by the Respondent. On 12/09/2021 said Mr. Pandey threatened her of dire consequences, if she did not withdraw the complaint. He also made lewd gestures. Also the Respondent on 30/11/2021 lodged a complaint against one Mr. Mohd. Anwarul who was also residing in the same staff quarter about obscene sexual act. Since no action was taken by the police, the Respondent filed a complaint under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ('POSH Act', for short). The said complaint was closed observing that residential staff quarters are not covered under the ambit of the POSH Act. In these circumstances, on 10/02/2022, she received the impugned transfer order by which she was transferred from Mumbai to Pune with immediate effect until further orders. The transfer order states that it is issued in the public interest. Soon thereafter on 04/04/2022, suspension order was issued. The said actions are *mala fide*, which were the result of the Respondent filing complaints against the said Mr. Pandey. The request of the Respondent to keep the transfer and relieving order in abeyance because she had made a representation to the Director of the Petitioner, was not heeded. Her chamber was sealed and she was not allowed to pick up her personal belongings. When she tried to contact the Head Office of the Petitioner at Delhi she was not permitted to meet the higher authorities, instead, she was told by the Deputy Director (Personnel) that her transfer order cannot be

canceled. She has made several representations to Senior Officials highlighting that she is a single mother of a teenage daughter having an aged father who is bed ridden and also an aged mother, however, the representations were not considered. On 20/04/2022, a show cause notice was issued to her. The tenure at one station is about ten years, which has not been completed by the Respondent. In these circumstances, the transfer order was challenged by the Respondent by filing the said original application.

3. The Petitioner filed reply in the Tribunal, contending *inter alia* that employees of the Petitioner are transferred all over India and transfer policy is based on aim to harmonize objectives of institutional memory and avoid development of vested interests and also for providing exposure to the employees working in different branches. That posting is not a matter of right. Normal tenure of posting for stenographer is five years and every official who joins the Petitioner directly, should serve a minimum of four stations in his career including one full term of hard area posting. That in the entire career of 27 years, the Respondent has stayed outside Mumbai only for a period of eighty days. She had completed a period of six years and 24 days and thereafter, she was due for transfer. In the past, she has been punished for lapses in performing official duties and was censured twice. It is contended that the said Mr. Pandey has also made several complaints against the Respondent. The Respondent had made complaints against said Mr. Pandey and one Mrs. Kelkar alleging cruelty towards animals. Most of the complaints are relating to criminal intimidation and cruelty to animals. An Advisory was issued to the Respondent directing her to refrain from bringing stray dogs to the quarter area by offering food to them. On 04/08/2021 a meeting was conducted by the Estate Manager

of the Residential Pool Quarters, and all the concerned parties were counseled. Various decisions were taken during the meeting and minutes of meeting were circulated. However, the Respondent replied to the said minutes, thereby refusing to accept suggestions / remedies resolved during the meeting. In order to conduct a fair and impartial inquiry, a lady Enquiry Officer, Ms. Ghorpade, was appointed, however, the said Respondent did not appear on the dates fixed. The said Mr. Pandey then made a request on 23/09/2021 to shift his residence from Antophill to Oshiwara Government Quarters. On 14/02/2022, the Respondent barged into Office of Head Office Branch / Superintendent of Police of the Petitioner without permission and behaved in an undisciplined manner, trying to indulge in unnecessary arguments. The Respondent has been placed under suspension by order dated 04/04/2022 for non-joining of duties and a show cause notice has been issued. It is contended that the Respondent has never been posted in hard area and the Competent Authority has considered all the reasons cited by the Respondent in her application.

4. After considering the rival submissions, the Tribunal has passed the impugned order as indicated above.

5. Learned counsel for the Petitioner submitted that the Respondent was due for transfer and the impugned transfer order was not the outcome of dispute between other officers of the Petitioner and the Respondent. He contended that the Tribunal has erred in holding that the action of transfer has been actuated with malice and it is punitive in nature. On the other hand learned counsel for the Respondent/employee has supported the impugned order.

6. We have considered the rival submissions and perused the record.

7. On the question of whether the transfer is actuated by malice and whether it is by way of punishment, the Tribunal has held that admittedly there has been complaints and cross complaints between the Respondent and Mr. Pandey. The Tribunal has considered the complaints in detail by enlisting them in tabular form. It is concluded therefrom that Mr. Pandey had filed complaints against the Respondent on account of feeding food to stray dogs and the Respondent had filed complaint against Mr. Pandey on the account of cruelty to animals. The Tribunal has observed from the said allegations, it is clear that issue of bias was raised and therefore, it was obligatory to decide the issue of bias first. It is noted that the Petitioner has not indicated in its reply that the issue of bias was decided or addressed. The Tribunal has considered that inflicting cruelty to the animals is cognizable offence punishable under Prevention of Cruelty of Animals, Act and therefore, if the complaint was made in that regard, it was duty of the Department to look into it and take appropriate steps. It is further noted that the Petitioner initiated inquiry and appointed an officer as Enquiry Officer against whom bias was alleged. It is not shown from the record that the Respondent's representation was decided. Therefore, the Tribunal found that the Respondent with justified in not participating in the inquiry.

8. The Tribunal has taken a note of the fact that this is a case of cross complaints by Respondent and said Mr. Pandey and the chronology of events shows that timing of transfer order dated 10/02/2022 was after the episodes of complaints and cross complaints. On this basis, it is held that transfer does not appear to be in public interest. The Tribunal has also found from the tenor of the reply given by the Petitioner, that the Respondent has been transferred from making complaint against officers. In these circumstances, the transfer has been

held as punitive. It is further held that the Petitioner has not shown even administrative exigency on the account of which the Respondent was transferred abruptly. The Tribunal has also noted that there are no allegations regarding integrity of the Respondent and she was transferred out of Mumbai and placed under suspension but her head quarter is kept at Mumbai.

9. Learned counsel for the Petitioner has not shown any material on record to contradict the aforesaid findings and observations of the Tribunal. We find that the view taken and conclusion drawn by the Tribunal is probable and the same is based on material available on record. The impugned order does not suffer from any perversity or jurisdictional error.

10. For the aforesaid reasons, we do not find any case made out to interfere in exercise of writ jurisdiction. The petition is accordingly dismissed. However, this adjudication would not preclude the Petitioner from operating the transfer policy if it intends to transfer the Respondent in future.

11. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)

(A.S. CHANDURKAR, J.)