
(2021) 09 BOM CK 0009

Bombay High Court

Case No: Writ Petition No. 9838, 9984, 9986, 9987, 9988, 9989, 9990, 9991, 9992, 9993, 9994
Of 2019

State Of Maharashtra &
Anr

APPELLANT

Vs

Anuradha Subhash
Dhumal And Others

RESPONDENT

Date of Decision: Sept. 1, 2021

Acts Referred:

- Maharashtra Police Act, 1951 - Section 2(6A), 2(6B), 2(6), 2(11A), 2(11B), 3, 22(1), 22N, 22N(2), 22N(1)(1), 22N(1)(b), 22N(2)(1)(b)
- Maharashtra Government Servants Regulation Of Transfers And Prevention Of Delay In Discharge Of Official Duties Act, 2005 - Section 3(1), 4(1)

Hon'ble Judges: Dipankar Datta, CJ; G. S. Kulkarni, J

Bench: Division Bench

Advocate: A. Y. Sakhare, N. K. Rajpurohit, Ram S. Apte, Vivek S. Salunke

Final Decision: Allowed

Judgement

Dipankar Datta, CJ

1. By a common judgment and order dated August 9, 2019, the Member (Judicial) of the Maharashtra Administrative Tribunal, Mumbai (hereinafter

the Tribunal, for short) disposed of 12 (twelve) original applications. The common order of transfer assailed in such original applications by the

original applicants were set aside, with a direction upon the respondents in the original applications to reinstate the original applicants on the posts they

were transferred from within two weeks from that date. The respondents before the Tribunal (hereafter the State, for short) have questioned

such common judgment and order in all these writ petitions.

2. The original applicants before the Tribunal being the respondents in the writ petitions (hereafter "original applicants", for short) are police

constables attached to the Police Commissionerate, Pune. At the material time, the original applicants were posted at the Social Security Cell of the

Crime Branch of such Commissionerate. By an order dated May 31, 2019 issued by the Commissioner of Police, Pune, all the original applicants stood

transferred to various police stations within the jurisdiction of the Police Commissionerate, Pune. None of the original applicants, however, were given

postings on transfer beyond a radius of 15 kms. from the Crime Branch office. The primary contention of the original applicants was that they had not

completed their normal tenure of five years at the Crime Branch and that the impugned transfers had been issued in contravention of the provisions of

sub-section (1)(b) read with sub-section (2) of section 22N of the Maharashtra Police Act, 1951, as amended (hereinafter "the 1951 Act", for

short). According to them, such transfers were mid-term transfers as defined in section 2(6B) of the 1951 Act and since the jurisdictional fact upon

the existence whereof such mid-term transfers could be ordered was absent, the impugned transfer orders were void ab initio. One other subsidiary

contention raised by the original applicants was that their transfers were ordered based on the recommendations of the Police Establishment Board

(hereafter "the Board", for short) but such Board had not been validly constituted in terms of the 1951 Act.

3. Having read the impugned judgment and order of the Tribunal, we note three features. First, the contention that the impugned mid-term transfers

ordered by the Commissioner of Police, Pune were in contravention of the 1951 Act, found favour with the Tribunal and succeeded. Secondly,

although the original applicants had questioned the constitution of the Board, on whose recommendation the transfers were ordered, such point was

not raised in course of hearing before the Tribunal and, therefore, the Tribunal did not pronounce its decision on such point. However, thirdly, the

(6A) "General Transfer" means posting of a 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;

(6B) "Mid-term Transfer" means transfer of a Police Personnel in the Police Force other than the General Transfer.

7. The plinth of the original applicants' claims before the Tribunal was this. They were transferred and posted at the Crime Branch of the Police

Commissionerate, Pune on diverse dates between 27th September, 2014 and 27th July 2018; thus, none of them had completed the normal tenure of

five years in the Crime Branch as on May 31, 2019. Relying on sections 2(6A), 2(6B) read with section 22N of the 1951 Act, it was, accordingly, their

contention that they could not have been transferred prior to completion of normal tenure of five years. Alternatively, they contended that even if it

were conceded that the Commissioner of Police had the power to effect mid-term transfers, the same could not have been effected without all the

circumstances specified in section 22N(2) of the 1951 Act, i.e., exceptional cases, public interest and administrative exigencies, being satisfied.

Drawing our attention to the order dated May 31, 2019 issued by the Commissioner of Police, Pune, it was contended by Mr. Apte, learned senior

counsel for the original applicants that absolutely no reason as to the special reasons/circumstances justifying the transfer of the original applicants

prior to completion of the normal tenure of posting can be discerned.

8. However, in the midst of the hearing, our attention was drawn by Mr. Sakhare, learned senior counsel appearing for the State, to the minutes of

meeting of the Board dated May 31, 2019 that preceded the impugned orders of transfer. Relevant portion thereof (translated version in English) reads

as follows: -

"On perusing the service records of the employees working in the Social Security Branch, majority of the employees have received number of

prizes for their skill and performance. Further, on perusing their confidential reports for last three years, it has been found that the remarks of all the

employees are of the grading viz. very good and outstanding.

From this it is found that, the said employees use all this knowledge viz. the informers in their branch and their network of gathering confidential

information for taking effective action on unlawful activities in Social Security Branch.

The Establishment Boards felt that if the said police personnel are appointed at the Police Station level then, it would help in taking action against the

unlawful activities at the Police Station level and also in preventing the same and it would be helpful for the safety of the weaker sections in the

society such as women, children and senior citizens etc. and for maintaining the public order. Hence, as per the provisions in Section 22(N)(1) in the

Maharashtra Police Act, 1951 available to the Police Establishment Board i.e. both the criteria viz. 1) Public Interest and 2) on account of

Administrative Exigency (in English in the original and emphasis supplied by us), to give appointment to/transfer of all the police personnel attached to

Social Security Branch to different Police Stations, the decision has been taken unanimously to transfer them to the places as shown against their

respective names.

9. Referring to such minutes, Mr. Sakhare contends that sufficient justification was available on record for transferring the original applicants and the

Tribunal fell in error and acted wholly in excess of jurisdiction by substituting its opinion for the opinion of the Board, as if it were exercising appellate

powers.

10. While the contention of Mr. Sakhare has been that the orders of transfer were perfectly legal and valid and the impugned judgment and order

merits interdiction, Mr. Apte contends that the orders of transfer were flawed for the reasons as assigned by the Tribunal and, therefore, the writ

petitions ought to be dismissed.

11. It is placed on record that both Mr. Sakhare and Mr. Apte have placed before us multiple authorities on the point of (il)legality and (in)validity of

transfer orders passed by the competent authority invoking the provisions of the 1951 Act as well as the Maharashtra Government Servants

Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter "the 2005 Act" for short) in support of

their respective contentions. We do not propose to refer to all such authorities, except a couple of them, since the issue raised in these writ petitions

can be decided on the basis of our interpretation of the relevant provisions of the 1951 Act read with the 2005 Act.

12. Transfer in relation to service would generally mean a change of place of employment within an organization. Since it is an incident of public

service, consent of the employee is not required. In most organizations, transfer is regulated by administrative instructions or policy guidelines. In the

State of Maharashtra, so far as Government employees are concerned, transfers are guided and regulated by the provisions of the 2005 Act.

Transfers of police personnel, however, are regulated by the amended provisions of the 1951 Act, the amendments having been necessitated by

reason of the decision of the Supreme Court reported in (2006) 8 SCC 1 (Prakash Singh & Ors. Vs. Union of India & Ors.). Since two kinds of

transfer are defined in the 1951 Act, we need to seek guidance from the statutory provisions for deciding the contentious issue raised in these writ

petitions. It is also considered appropriate to remind ourselves at this juncture that the 1951 Act was enacted to amalgamate various Police Forces into

one common Police Force and, inter alia, binds the police personnel employed across the State in their performance of functions and the State

Government in the exercise of its powers. Section 3 of the 1951 Act ordains that there shall be one Police Force for the whole of the State of

Maharashtra and such force shall include every police officer referred to in clause (6) of section 2. Although the original applicants are not covered by

clause (6), they are indeed police personnel as defined in clause (11A) of section 2. Therefore, the provisions of the 1951 Act would apply to all police

personnel appointed thereunder and attached either to various Police Commissionerate area or beyond forming part of the Police Force of the State.

13. As can be seen from the extract of section 22N supra, sub-section (1)(b) of the 1951 Act ordains that for the police constabulary, which includes

constables, a normal tenure shall be five years at one place of posting (emphasis supplied).

“General Transfer”, in section 2(6A), emphasizes posting of police personnel in the Police Force from one post, office or Department to another

post, office or Department after completion of normal tenure as mentioned in sub-section (1) of section 22N (emphasis supplied). Such provisions, as

of necessity, need to be juxtaposed with the relevant provisions of the 2005 Act, viz. sections (3)(1) and (4)(1), and read to gather the legislative intent.

So read, what was intended by the legislature by the words “at one place of posting” would clearly be evident. Section 3(1) of the 2005 Act

ordains that for all groups of State Government servants or employees, viz. Groups A, B, C and D, the normal tenure in a post (emphasis supplied)

shall be three years, with section 2(g) defining “post” as “the job or seat of duty to which a Government servant is assigned or posted”. While

in the 2005 Act the legislature has used the words “in a post”, i.e., the job assigned or the seat of duty, significantly, while incorporating

amendments in the 1951 Act, the expression used is “at one place of posting”. Such expression, quite obviously, was used to carve out a

distinction between police personnel serving under a Police Commissionerate, which necessarily would exercise jurisdiction over a specified

“place” as defined in section 2(8), and those who are posted beyond a Police Commissionerate area but is part of the State Police Force. While,

ordinarily, the place of employment of a police constable attached to a Police Commissionerate is not likely to change even with change of posting, a

change of posting for a member of the State Police Force could entail a change of place of posting. The expression "place of posting", therefore,

assumes importance in the present context. The legislature while amending the 1951 Act and incorporating amendment in section 22N therein in 2015

has designedly not ordained normal tenure of five years on one post bearing in mind police personnel attached to Police Commissionerate area.

Therefore, the distinction between normal tenure of five years at one place of posting [as in section 22N(1)(b)] and the normal tenure in a post shall

be three years as in section 3(1) of the 2005 Act has to be borne in mind, which leaves no manner of doubt that the original applicants do not have

semblance of any right to claim that once posted at the Crime Branch, they cannot be moved or shifted until they complete the normal tenure of five

years. "Post" has been defined in section 2 (11B) of the 1951 Act. Such definition is not similar to the definition of "post" in the 2005 Act.

Thus, posting of the original applicants at the Crime Branch is neither a job assigned nor a seat of duty so as to provide a protective umbrella from

transfer prior to the normal tenure. Had the constables like the original petitioners been governed by an enactment having similar provisions such as

the 2005 Act, the legal position would have been different and they could claim protection from transfer. Notably, the jurisdiction of the Police

Commissionerate, Pune, extends to the whole of the city of Pune, which would be the "place of posting" referred to in section 22N(1)(b) of

the 1951 Act. Therefore, so long as a police constable is not shifted out of Pune, he cannot derive any assistance from section 22N(1)(b) to contend

that if he is posted on a particular seat of duty or a job is assigned to him, he cannot be transferred. However, we may not be misunderstood to have

laid down the law by our interpretative exercise of the relevant statutory provision that a member of the police constabulary could be made to

discharge duties from different posts in the city of Pune by subjecting him to frequent transfers. If a constable is so subjected, any alleged arbitrary

decision resulting in frequent transfers could be made the subject matter of challenge on available grounds of judicial review.

14. Our interpretation of section 22N(1)(b) of the 1951 Act accords with the co-ordinate Bench decision of this Court reported in 2019 (3) Mh.L.J.

851 [Ashok S/o Rangnath Barde Vs. State of Maharashtra & Ors.], decided by the Aurangabad Bench. It has been held there as follows: -

“16. *** The place of posting has, therefore, to mean that a particular town or city, whereat an incumbent is posted irrespective of the fact of he

having served with very many branches of the same department at various places in the same town or city.”

15. We, thus, hold that the original applicants’ primary contention based on section 22(1)(b) and section 22N(2) read with sections 2(6A) and

2(6B) is devoid of merit.

16. However, we are conscious that our interpretation of the relevant statutory provisions, as delineated above, would render the transfer of the

original applicants to be “General Transfer” within the meaning of section 2(6A) of the 1951 Act although, at all material times, the State

proceeded on the premise that the original applicants were being subjected to mid-term transfers, as defined in section 2(6B) thereof. Be that as it

may, nothing turns on it because there cannot be any estoppel against the statute. Any misinterpretation of the statutory provisions by the

administrative authorities cannot be fatal for such authorities when the legislative intent is clear, the interpretation of the relevant statute, as made,

does not do violence to the scheme of the statute and the power is not shown to be otherwise non-existent.

17. Having interpreted the law which, admittedly, was not examined by the Tribunal for lack of appropriate assistance, we now proceed to consider

Mr. Apte’s argument that the State had proceeded to transfer the original applicants mid-term and that such decision was taken without recording

the requisite satisfaction; and that, the Tribunal was not in error in reaching the conclusion it did. Frankly, this submission has not impressed us at all. It

is true that the order of the Commissioner of Police, Pune dated May 31, 2019 does not record any reason; however, sight cannot be lost of the

minutes of the Board meeting extracted supra. Although the Tribunal has taken exception to such minutes by recording that the ground for transfer is

not sustainable, we are afraid, such a finding is clearly not tenable. In terms of the provisions of the 1951 Act, it is the Board to decide on transfers

and postings of police personnel like the original applicants. The final judge whether to transfer police personnel or not, on facts, therefore, is the

Board. Although it was urged in the original applications that the Board was improperly constituted, it was not pressed further before the Tribunal as

well as before us. The original applicants while they were posted at the Crime Branch had acquitted themselves creditably. Based on such

performances on their part, the Board formed an opinion that the services of the original applicants should be utilized in the police stations where

maintenance of law and order is the paramount duty. The opinion formed by the Board of the requirement of the original applicants to be posted at

police stations has to be regarded as a judgment of belief, that is, a belief or a conviction resulting from consideration of materials as to what it thought,

or perceived, would advance the cause of public interest or administrative exigency best having regard to prevailing circumstances. If a public

authority has to form an opinion and its opinion is to govern the subjects, such opinion must be formed on such reasons and grounds as the public

authority seems relevant and material. An opinion, which is a judgment of belief based on certain reasons/grounds, could at times reflect a subjective

satisfaction but even such satisfaction has to be based on objective criteria, meaning thereby, application of mind to pertinent and proximate matters

only, and excluding the irrelevant and the remote. The Tribunal was required to consider whether the opinion of the Board was fallible on the

existence of any of the vices, that is formation of opinion not based on pertinent and proximate matters or based on irrelevant and remote factors. We

do not endorse Mr. Apte's argument that all three circumstances, i.e., exceptional cases, public interest and administrative exigencies, were

required to be satisfied before ordering the mid-term transfer of the original applicants. In our considered opinion, it could be on either one of the three

circumstances that a mid-term transfer order could issue with the second and third circumstances being inter-related. Administrative exigency means

the need or demand for running a good administration. This is intrinsically connected with public interest, whereas the first circumstance is a residuary

circumstance going beyond the others to meet demands created by exceptional situations. We do not see reason to hold that there has been breach of

statutory provisions in transferring the original applicants. Also, mala fide exercise of power has not been whispered. None of the two available

grounds based whereon an order of transfer could be legitimately and successfully challenged was present for the Tribunal to interfere. Mr. Sakhare

is right in his contention that the Tribunal exceeded its jurisdiction in finding fault with the opinion of the Board, as if it were exercising appellate

jurisdiction. We conclude our discussion on this point by holding that the caution sounded by the co-ordinate Bench of this Court in its decision reported

in 2019 (4) Mh.L.J. 547 [Santosh Machhindra Thite Vs. State of Maharashtra & Ors.] cited by Mr. Apte has been duly adhered to and that the orders

of the Commissioner of Police, Pune to transfer the original applicants, in furtherance of the minutes of the meeting of the Board, is unexceptionable.

18. We do not, however, consider it necessary to deal with the other decisions cited by Mr. Apte since none of them dealt with transfer of a police

constable and, therefore, did not involve consideration of the provisions of the 1951 Act.

19. Before concluding, notice has to be taken of the other ground on which the Tribunal set aside the impugned orders of transfer. According to the

Tribunal, several other constables were transferred in the same process by which the original applicants were transferred. However, on the request of

some of such constables, the Board had cancelled their transfer orders or had modified some of such transfer orders earlier made, which bear

testimony to the lack of either public interest or administrative exigency. As has been noted earlier, documents in this behalf were tendered across the

bar and the learned Presenting Officer, who was representing the State, had not disputed its contents possibly due to oversight or lack of instructions.

In course of hearing Mr. Sakhare has produced relevant documentary evidence to show that either for family reasons or on medical grounds, some of

the constables under orders of transfer had prayed for change of posting upon transfer and that, to the extent possible, such requests were granted. It

is the specific contention of Mr. Sakhare that in none of the cases, such constables were retained at the Crime Branch. This position could not be and

has not been disputed by Mr. Apte. Thus, there is no good reason to uphold the reasoning of the Tribunal in this behalf.

20. For the reasons aforesaid, we hold the impugned judgment and order of the Tribunal to be indefensible. The same stands set aside. The writ

petitions are allowed, with the result that the original applications on the file of the Tribunal stand dismissed. The parties are left to bear their own

costs.