

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION STAMP NO.658/2017
(Shri Bhimrao Marotirao Ambalkar V/s.
The State of Maharashtra & Ors.)**

**CORAM : HON'BLE SHRI JUSTICE A.H. JOSHI, CHAIRMAN
(This case is placed before the Single Bench
due to non-availability of Division Bench)**

DATE : 16-05-2017

ORAL ORDER:

Heard Shri Y.S.Thorat learned Advocate for the applicant and Shri M.P.Gude learned Presenting Officer for the respondents.

2. Issue notice to respondents, returnable on 23-06-2017.
3. Tribunal may take the case for final disposal at this stage and separate notice for final disposal shall not be issued.
4. Applicant is authorized and directed to serve on respondents intimation/notice of date of hearing duly authenticated by Registry, along with complete paper book. Respondents are put to notice that the case would be taken up for final disposal at the stage of admission hearing.
5. This intimation/notice is ordered under Rule 11 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988, and the questions such as limitation and alternate remedy are kept open.
6. The service may be done by hand delivery, speed post, courier and acknowledgment be obtained and produced along with affidavit of compliance in the Registry before due date. Applicant is directed to file affidavit of compliance and notice.

7. Heard learned Advocate for the applicant, ex-parte, being tendered in vacation.
8. Heard for ex-parte interim relief:
9. According to the applicant :-
 - (a) Applicant has right to withdraw the notice of voluntary retirement within time/days of notice with leave of employer.
 - (b) Leave to withdraw application/notice of VRS cannot be refused ordinarily and without reasons, and hence impugned order is illegal and is liable to be set aside.
 - (c) impugned order was communicated to him by telephonic communication and it was sent to his office by e-mail.
 - (d) Impugned order was delivered to the applicant on his e-mail on 13-05-2017 in the afternoon.
 - (e) Though respondent no.2 and 3 are asked/ordered to take charge from the applicant, they did not arrive to take charge from the applicant. Applicant is still holding charge.

10. This Tribunal has perused impugned order. The order does not disclose that applicant's request dated 27-12-2016 to withdraw notice dated 14-10-2016 is rejected in words expressed, rather it is ignored/impliedly rejected. Moreover, reasons or ground due to which application dated 27-12-2016 is rejected are not expressed/disclosed or recorded.

11. Therefore, *prima facie* applicant has made out case that the denial to withdraw the notice of retirement and acceptance of VRS is arbitrary and high handed, and may be eventually set aside at the final hearing.

12. Hence, applicant has made out case for grant of interim relief by way of stay to impugned orders and also to grant him injunction for restraining the respondents from taking charge of the post of Executive Engineer, Water Resource Division, Wasmatnagar from the applicant.

13. Hence, by ex-parte ad-interim order, impugned order dated 12-05-2017 Exhibit-D is hereby stayed. The Respondents are restrained from taking charge of the post of Executive Engineer, Water Resource Division, Wasmatnagar held by him. Respondents are directed to show cause as to why this order of stay and injunction should not be made absolute.

14. Learned Advocate for the applicant prays for leave to amend the O.A. by substituting the memo of O.A., index, synopsis etc. Leave as prayed for is granted.

15. Amendment be carried out within 10 days.

16. Fresh notice on usual terms be issued again upon substitution of amended O.A., and it be got served by the applicant.

17. Respondents shall be free to reply and apply for early hearing.

18. Respondents shall file affidavit countering each para and each averment contained in the O.A., as filed/as amended.

19. Steno copy and Hamdust allowed to both parties. Learned P.O. is directed to communicate this order.

20. S.O.23-06-2017.

CHAIRMAN

YUK ORAL ORDER 16-05-2017

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.292/2017
(Shri Sudarshan s/o Laxman Mundhe V/s.
The State of Maharashtra & Ors.)**

CORAM : HON'BLE SHRI JUSTICE A.H. JOSHI, CHAIRMAN

DATE : 16-05-2017

ORAL ORDER:

Heard Shri V.H.Dighe learned Advocate for the applicant and Shri M.P.Gude learned Presenting Officer for the respondents.

2. Issue notice to respondents, returnable on 23-06-2017.
3. Tribunal may take the case for final disposal at this stage and separate notice for final disposal shall not be issued.
4. Applicant is authorized and directed to serve on respondents intimation/notice of date of hearing duly authenticated by Registry, along with complete paper book. Respondents are put to notice that the case would be taken up for final disposal at the stage of admission hearing.
5. This intimation/notice is ordered under Rule 11 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988, and the questions such as limitation and alternate remedy are kept open.
6. The service may be done by hand delivery, speed post, courier and acknowledgment be obtained and produced along with affidavit of compliance in the Registry before due date. Applicant is directed to file affidavit of compliance and notice.

7. Learned Advocate for the applicant urges for hearing on ex-parte interim relief.

8. Heard learned Advocate for the applicant and learned P.O., who prays for time.

9. Learned Advocate for the applicant has urged that impugned order being passed within one year of his posting at Aurangabad, it would be permissible only on the grounds available as prescribed in S.22 N (2) of Maharashtra Police Act, while impugned order does not disclose existence of ground whatsoever.

10. Perused impugned order. In its preamble, narration and plenary clause or at any other place, the grounds whatsoever, as contemplated by clause (2) of Section 22-N are not referred to or mentioned.

11. This case was adjourned for enabling learned P.O. for taking instruction in the matter for enabling him to throw light on the reasons which have led to passing of impugned order.

12. Though learned P.O. was granted time, he could not explain or state as to what ground existed due to which applicant is transferred.

13. Hearing was again adjourned. Later, learned P.O. has come up with certain documents.

14. Learned P.O. has tendered for perusal certain documents. These documents contained 2 letters which are sent by the Mantralaya thereby forwarding recommendations of various dignitaries, MLAs, Ministers and requests of officers for transfer of various Police officers.

15. First letter from Mantralaya, which is dated 31-03-2017. In this letter, applicant's transfer from his present posting (at Karjat) to Kaij is recommended by MLA Smt. Sangita Vijayprakash Thombre.

16. In second letter from Mantralaya, which is dated 10th April, 2017 applicant's transfer as SDPO of Khamgao from his present place is proposed/recommended by Hon'ble Minister Shri Pandurang Phundkar.

Both these letters also accompany copies of the recommendations of the concerned. Letter sent by Hon'ble Minister does not contain any reason due to which applicant should be moved out of his present post at Karjat..

17. Another document which is tendered is a tabulated sheet, in which facts of both these recommendations are narrated. Purportedly, this sheet is the proposal of the transfer submitted by the Director General of Police based on the Government's earlier recommendations. It is thus obvious that due to requisition by Hon'ble Minister Shri Pandurang Phundkar, applicant is now transferred from Karjat to Khamgaon within 2 years, which period is statutory tenure and actually the applicant is transferred within 9 months.

18. It is thus evident that request of Hon'ble Minister is without comprehending any ground or cause referred to in Section 22-N(2) of the Maharashtra Police Act, does not fit within the ambit as regards reasons or grounds to invoke the power to transfer.

19. Thus, it emerges that impugned transfer, qua applicant is violative of mandatory provisions contained in Section 22-N (2) of the Maharashtra Police Act.

20. Thus, the applicant has made out case for grant of interim stay. Hence, interim relief is granted in terms of prayer contained in paragraph 20 (a), which reads as follows:

"20. (a) Pending hearing and final disposal of this Original Application, the impugned transfer order dated 29-04-2017 issued by the respondent No.1, to the extent of the applicant (Serial No.42) from the post of Sub Divisional Officer, Karjat Sub Division, Dist Ahmednagar to the post of Sub Divisional Officer, Khamgaon Sub Division, District Buldhana (Annexure "A-2") may kindly be stayed."

21. The Director General of Police shall be free to bring to the notice of the Government if he too is convinced that it may be difficult to justify the transfer order, to propose the Government to withdraw it.

22. In view that impugned order is passed by the Government, this O.A. if it is to be contested, affidavit in reply must be filed by Principal Secretary, Home Department.

23. Learned P.O. was called upon to furnish the name of Principal Secretary. Learned P.O. has furnished it as under:

“Shri Sudhir Srivastav, Principal Secretary, Home Department, Mantralaya, Mumbai. ”

24. Hence, Shri Sudhir Srivastav, Principal Secretary, Home Department, Mantralaya, Mumbai shall file affidavit of contest if contest is opted. In that event affidavit answering each point and paragraph must be filed.

25. If transfer order is withdrawn, it shall not be necessary for the Government/Secretary to file affidavit.

26. Steno copy and Hamdust allowed to both parties.

27. S.O.23-06-2017.

CHAIRMAN

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**M.A.No.180/2017 IN O.A.St.No.657/2017
(Lata d/o Baburao Sarode & Ors. V/s.
The State of Maharashtra & Ors.)**

CORAM : HON'BLE SHRI JUSTICE A.H. JOSHI, CHAIRMAN

DATE : 16-05-2017

ORAL ORDER:

Heard oral submissions of the learned Advocate for the applicants. Perused the application.

It is seen that grounds on which transfer orders are challenged are not concurrent. Each applicant ought to file separate O.A.

Hence, this M.A. is rejected. O.A. be treated as rejected with liberty to file fresh O.A. for same relief.

CHAIRMAN

YUK ORAL ORDER 16-05-2017