

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.224 OF 2019
WITH
ORIGINAL APPLICATION NO.225 OF 2019
(Subject :- Transfer)**

1. ORIGINAL APPLICATION NO.224 OF 2019

DISTRICT : AURANGABAD

Anil Laxman Chavan,)
Age 33 years,)
Occupation : Service (as Police Naik),)
R/o Bhartiya Khel Pradhikaran Vidyapith)
Parisar, Aurangabad.)...**Applicant**

V E R S U S

1. **The State of Maharashtra,**)
Through the Secretary,)
Home Department,)
Mantralaya, Mumbai – 400 032.)
2. **The Superintendent of Police,**)
Aurangabad Rural, Aurangabad.)
3. **The Inspector General of Police,**)
Aurangabad Range, Aurangabad.)...**Respondents.**

WITH

2. ORIGINAL APPLICATION NO.225 OF 2019

DISTRICT : AURANGABAD

Walmik Daulatrao Nikam, age 32 years,)
Occupation : Service (as Police Naik),)
R/o Bhartiya Khel Pradhikaran Vidyapith)
Parisar, Aurangabad.)...**Applicant**

V E R S U S

1. **The State of Maharashtra,**)
Through the Secretary,)

- Home Department,)
 Mantralaya, Mumbai – 400 032.)
2. **The Superintendent of Police,**)
 Aurangabad Rural, Aurangabad.)
3. **The Inspector General of Police,**)
 Aurangabad Range, Aurangabad.)Respondents.

APPEARANCE : Smt. Amruta Paranjape-Menezes, learned Advocate for the Applicants in both the Original Applications.

: Shri B.S. Deokar, learned Presenting Officer for the Respondents in O.A. No. 224 of 2019.

: Smt. Sanjivani K. Deshmukh-Ghate, learned Presenting Officer for the Respondents in O.A. No. 225 of 2019.

CORAM : **B.P. Patil, VICE CHAIRMAN**

RESERVED ON : **05.07.2019.**

PRONOUNCED ON : **09.07.2019.**

COMMON ORDER

1. Since the facts and issues involved in these two Original Applications are similar and identical, I am deciding both these Original Applications by the common order.

2. The applicants have challenged the impugned transfer order dated 06.05.2017 passed by respondent No. 2 transferring them

from the office of Local Crime Branch, Aurangabad to the Police Headquarters, Aurangabad.

3. The applicant viz. Anil Laxman Chavan, in O.A. No. 224/2019 joined service on 29.09.2008 as a Police Constable on the establishment of respondent No. 2. Thereafter, on 17.08.2009 he was promoted as Naik Police Constable and posted at Kannad Police Station. On 18.06.2013 he was transferred to Anti-Corruption Bureau (ACB) and thereafter he was transferred from Anti-Corruption Bureau to the Police Headquarters, Aurangabad. On 31.12.2016 at his request he has been transferred from the Police Headquarters to the Local Crime Branch. Accordingly, he was relieved from Police Headquarter on 28.04.2017. He joined his new posting at Local Crime Branch on the same date.

4. The applicant in O.A. No. 225/2019 viz. Walmik Daulatrao Nikam, was initially appointed as Police Constable on the establishment of respondent No. 2 on 26.09.2008. On 14.08.2009 he was promoted as Naik Police Constable and was posted at Baddod Bazaar Police Station. On 15.01.2014 he has been transferred to Police Station Bidkin and thereafter on 25.03.2015 he has been transferred from Bidkin to the Police Headquarter at Aurangabad. On 31.12.2016 he has been transferred from the Police Headquarters, Aurangabad to the Local Crime Branch,

Aurangabad, on his request. Accordingly, on 28.04.2017 he was relieved from the Police Headquarters, Aurangabad and he joined the service at the Local Crime Branch, Aurangabad on the same date.

5. Both the applicants started working at Local Crime Branch, Aurangabad from 28.04.2017. They hardly served 8 days at Local Crime Branch at Aurangabad. They were not due for transfer, but on 06.05.2017 respondent No. 2 issued transfer order and cancelled their earlier transfer order posting them at Local Crime Branch and posted them at Police Headquarters at Aurangabad. It is their contention that the impugned transfer order dated 06.05.2017 transferring them at the Police Headquarters at Aurangabad is in contravention of the Section 22N(1) of the Maharashtra Police Act. It is midterm and mid-tenure transfer. It is their contention that the respondent No. 2 had not followed the provisions of Maharashtra Police Act and, therefore, it is illegal.

6. It is contention of the applicants that meanwhile some of their colleagues, who were also transferred by the respondent No. 2 by the same order dated 06.05.2017, have challenged their transfers before this Tribunal by filing the O.A. Nos. 843 & 844 both of 2017. Those Original Applications were allowed and this

Tribunal set aside the transfer order of those applicants by quashing and setting aside the impugned transfer orders.

7. It is their contention that they were posted at Police Headquarters after cancellation of their earlier transfer order. They apprehended that the respondent No. 2 will take coercive action against them, if they challenge the transfer order and, therefore, they do not have courage to approach this Tribunal. After decision in the O.A. Nos. 843 & 844 both of 2017 they filed representations dated 10.09.2018 and 20.04.2018 before respondent No. 2, but respondent No. 2 had not decided the representations. Therefore, they approached this Tribunal. It is their contention that this Tribunal while quashing and setting aside the transfer order dated 6.5.2017 in respect of the applicants in O.A. Nos. 843 & 844 both of 2017 held that respondent No. 2 had not followed the provisions of Maharashtra Police Act while effecting their transfers and transfer orders were illegal. It is their contention that their cases are covered by the decision rendered by this Tribunal. The impugned transfer orders are illegal and, therefore, they prayed to quash and set aside the impugned transfer orders by allowing the Original Applications.

8. Respondent Nos. 1 to 3 have filed affidavit in reply and resisted the contentions raised by the applicants in both the

Original Applications. It is their contention that the impugned order dated 6.5.2017 has been issued by following due procedure and the provisions of Maharashtra Police Act. The previous transfers of the applicants were made without obtaining sanction from the Police Establishment Board and, therefore, they were irregular. The respondent No. 2 has corrected the irregularity and issued the impugned transfer order by cancelling the earlier transfer order of both the applicants. They have admitted the fact that the applicants filed representation before the respondent No. 2 on 20.4.2018, when they learnt about the decision of this Tribunal in O.A. Nos. 843 & 844 both of 2017. It is their contention that the meeting of Police Establishment Board has been held on 6.5.2017 and in that meeting it was decided to cancel earlier transfers of the applicants transferring them from the Police Headquarters, Aurangabad to the Local Crime Branch, Aurangabad as there was irregularity and as it was issued in contravention of Maharashtra Police Act. Accordingly, the impugned transfer order has been issued. It is their contention that excess Police Personnel against sanctioned posts were posted at LCB and, therefore, the previous transfer orders of the applicants posting them at LCB has been cancelled by the impugned transfer order dated 6.5.2017. It is their contention that the Police Establishment Board duly constituted by the respondent No. 2 has decided to cancel earlier

transfer orders of the applicants. It is their contention that there is no illegality in the impugned transfer order dated 6.5.1017 and, therefore, they prayed to reject the Original Application.

9. I have heard the arguments advanced by Smt. Amruta Paranjape-Menezes, learned Advocate for the Applicants in both the Original Applications, Shri B.S. Deokar, learned Presenting Officer for the Respondents in O.A. No. 224 of 2019 and Smt. Sanjivani K. Deshmukh-Ghate, learned Presenting Officer for the Respondents in O.A. No. 225 of 2019. I have perused the application, affidavit, affidavit in reply filed on behalf of respondent Nos. 1 to 3. I have also perused the documents produced on record by both the parties.

10. Learned Advocate for the applicant has submitted that earlier both the applicants were serving in Police Headquarters at Aurangabad. On their request they have been transferred from Police Headquarter to Local Crime Branch, Aurangabad by an order dated 31.12.2016. Thereafter, they have been relieved from Police Headquarters on 28.4.2017 and on the same date they joined the posting at Local Crime Branch, Aurangabad. She has submitted that both the applicants served in L.C.B. for 8 days only and thereafter, respondent No. 2 issued impugned order dated 6.5.2017 cancelling their earlier transfer order posting them at

Local Crime Branch Aurangabad and reposted them at Police Headquarters by issuing the impugned transfer order dated 6.5.2017. She has submitted that the impugned order is midterm and mid-tenure transfer order. The respondent No. 2 has not followed the provisions of Maharashtra Police Act while making the transfers of the applicants. She has submitted that no exceptional circumstances on administrative exigencies had been made out by the respondents while issuing transfer order of both the applicants and, therefore, the impugned order is illegal and in contravention of the provisions of Section 22N of the Maharashtra Police Act. She has submitted that no Police Establishment Board as provided Under Section 22J-1 of the Maharashtra Police Act has been constituted by the respondent No. 2, the Superintendent of Police, Aurangabad Rural, Aurangabad, while effecting the transfer of the Police Personnel. Not only this, but no meeting of such Board has been called and no decision of transfer of Police Personnel including the applicants has been taken. Therefore, the impugned transfer order is illegal. The respondent No. 2 in the capacity of superintendent of Police issued the transfer order, which is illegal and against the provisions of Maharashtra Police Act. Therefore, she has prayed to quash and set aside the impugned transfer order by allowing the OAs.

11. Learned Advocate for the applicants has further submitted that the respondents had contended that excess Police Personnel have been appointed in Local Crime Branch against sanctioned posts and, therefore, the impugned transfer order has been effected, but no such reason has been mentioned in the impugned transfer order. She has submitted that after passing the impugned transfer order on 31.12.2017 the respondent No. 2 issued another order and posted 8 Police Personnel in Local Crime Branch, which shows that the respondent No. 2 had issued the impugned transfer order with malice, arbitrarily and mala fide and, therefore, it requires to be quashed and set aside and, therefore, she has prayed to allow the Original Application.

12. Learned Advocate for the applicant has further submitted that by the impugned order dated 6.5.2017, as much as, 11 Police Personnel have been transferred and their earlier transfer order has been cancelled by the respondent No. 2. She has further submitted that some of the aggrieved Police Personnel had approached this Tribunal by filing O.A. Nos. 843 & 844 both of 2017. The said OAs were allowed by this Tribunal on 17.07.2018 and transfer orders of those applicants have been quashed and set aside and they have been reposted at their earlier posting. She has further submitted that all issues raised by the applicants in the present O.As. have been dealt with and decided by this Tribunal

and this Tribunal has held that the respondent No. 2 issued the transfer order with malice, mala fide and without recording just reason. It was held that no Police Establishment Board had been established by the respondent No. 2 for effecting the transfers of the applicants and, therefore, this Tribunal quashed the impugned transfer orders of the applicants therein. She has submitted that the case of the present applicants is squarely covered by the decision rendered by this Tribunal in O.A. Nos. 843 & 844 both of 2017 and, therefore, on that ground also she prayed to allow the present Original Applications.

13. Learned Presenting Officers have submitted that the impugned order has been issued by the respondent No. 2 in order to cure the irregularity caused while making earlier transfers of the applicant and other Police Personnel. The said matter was placed before the Police Establishment Board duly constituted by the respondent No. 2 and Police Establishment Board considered all the aspects and the provisions of Maharashtra Police Act and decided to cancel earlier transfer order of the applicants transferring them from Police Headquarter to Local Crime Branch and reposted them at Police Headquarter. They have submitted that there is no illegality in the impugned order. The impugned order does not violate any provision of Maharashtra Police Act. They have submitted that excess Police Personnel against the

sanctioned post were posted in Local Crime Branch and, therefore, the respondent No. 2 has cancelled the transfer and posting of the applicant in Local Crime Branch by the impugned order. They have submitted that the impugned order has been issued in the interest of administration and on account of administrative exigency. They have submitted that there is no illegality in the impugned orders and, therefore, they supported the impugned orders and prayed to reject the OAs.

14. Admittedly, both the applicants have been transferred in the office of Local Crime Branch, Aurangabad from Police Headquarter, Aurangabad by the impugned order dated 31.12.2016. Both of them have been relieved on 28.04.2017 from Police Headquarter and on the very same day they joined LCB. They have hardly worked for 8 days in LCB before issuance of the impugned transfer order dated 6.5.2017. The respondent No. 2 issued the impugned orders and cancelled their earlier transfer and reposted them at Police Headquarter. The impugned transfer orders are midterm and mid-tenure transfers.

15. On perusal of the record, it reveals that the respondents have not produced the documents to show that the Police Establishment Board has been constituted by respondent No. 2 in view of the provisions of Section 22J-1 of the Maharashtra Police Act and duly

constituted Police Establishment Board decided to cancel the earlier transfer order of the applicants and reposted them. The impugned order does not show that the matter has been placed before the Police Establishment Board and Police Establishment Board decided the same. On perusal of the impugned order dated 6.5.2017, it reveals that it has been issued by the respondent No. 2 in the capacity of Superintendent of Police. Some of the employees, who were aggrieved by the said order dated 6.5.2017 approached this Tribunal by filing O.A. Nos. 843 & 844 both of 2017 raising the similar objections. This Tribunal while deciding those OAs considered all the issues involved in those OAs and held that no Police Establishment Board as required under Section 22J-1 of the Maharashtra Police Act has been constituted by the respondent No. 2 and no meeting of Police Establishment Board as alleged has been held and, therefore, this Tribunal has quashed the impugned transfer order so far as the applicants in O.A. Nos. 843 & 844 both of 2017 are concerned. It has been held in the said decision that requirement of Section 22N-(2) of the Maharashtra Police Act had not been fulfilled while issuing impugned transfer order and mandatory provisions of Section 22N had not been followed by the respondent No. 2 while transferring the applicant therein and, therefore, this Tribunal has quashed and set aside the impugned transfer orders.

16. This Tribunal has further held in the aforesaid O.A. Nos. 843 & 844 both of 2017 that the respondent had transferred those applicants on the ground that excess Police Personnel have been posted in Local Crime Branch against the sanctioned post, but it has been brought to the notice of this Tribunal that immediately another 8 Police Personnel have been posted in LCB by the respondents and, therefore, this Tribunal had doubt about intention of respondent No. 2 in making transfer of the applicants and hence, this Tribunal has held that the respondent No. 2 issued the transfer orders with a view to take vengeance against her predecessor in the office and, therefore, the applicants and other personnel at constabulary level have been victimized. Therefore, this Tribunal has quashed the impugned transfer orders cancelling the earlier transfers of the applicants within a short span of time. In the said decision it has been observed by this Tribunal that the act on the part of the respondent No. 2 transferring Police Personnel is with malice, arbitrary and illegal and, therefore, this Tribunal has quashed and set aside the impugned transfer orders of the applicants in those OAs. This Tribunal has held that the impugned transfer order is issued in violation of the section 22N and it has been issued with malice in case of similarly situated persons.

17. The cases of the present applicants are also squarely covered by the decision rendered by this Tribunal in the cases of **(1) SHRI DEEPESH RAMESH NAGZIRE VS. STATE OF MAHARASHTRA & OTHERS; (2) SHRI SUNIL RAMDAS KHARAT VS. STATE OF MAHARASHTRA & OTHERS [O.A. NOS. 843/2017 & 844/2017 respectively]** decided on 17.07.2018. The impugned order has been issued by the respondent No. 2 mala fide, arbitrarily and in violation of the provisions of the Maharashtra Police Act. Therefore, the impugned order by which earlier transfer orders of the applicants had been cancelled and they have been posted at Police Headquarter is not legal. Hence, it requires to be quashed and set aside by allowing both the OAs.

18. In view of the above said discussion, the O.A. Nos. 843 & 844 both of 2017 are hereby allowed. The impugned transfer order dated 6.5.2017, by which earlier transfer orders of the applicants have been cancelled and they have been reposted at their earlier posting i.e. at Police Headquarter, Aurangabad are hereby quashed and set aside. The respondent No. 2 is directed to issue order reposting the applicants at their earlier posting i.e. at Local Crime Branch, Aurangabad, immediately. No order as to costs.

(B.P.PATIL)
VICE CHAIRMAN