

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD**

**TRANSFER APPLICATION NO. 08 OF 2022
(WRIT PETITION NO. 3060 OF 2022)**

DISTRICT : NANDED

Kailas s/o Pralhad Yarmurwad,)
Age : 34 years, Occu. : Service,)
R/o : Akharga, Tq. Mukhed, Dist. Nanded.)

.... **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through Secretary,)
Tribal Development Department,)
Mantralaya, Mumbai.)
2. **The Scheduled Tribe Caste Certificate
Verification Committee Kinwat,**)
Through its Dy. Director (R),)
At Aurangabad.)
3. **The Superintendent of Police,**)
Sangali, Office of Superintendent)
Sangali-Miraj Road, Vishrambag,)
Sangali, Tq. & Dist. Sangali.)
4. **The Superintendent of Police,**)
Nanded, Office of Superintendent)
Nanded, Tq. & Dist. Nanded.)

... **RESPONDENTS**

APPEARANCE : Shri Dhananjay Mane, Advocate for Applicant.

: Shri M.P. Gude, Presenting Officer for
Respondent authorities.

CORAM : **JUSTICE SHRI P.R. BORA, VICE CHAIRMAN**

DATE : **24.01.2023.**

ORDER

1. Aggrieved by the order dated 31.01.2022 passed by the respondent No. 4 i.e. the Superintendent of Police, Nanded, thereby cancelling the inter district transfer of the applicant from Sangli to Nanded, the applicant had preferred W.P. No. 3060 of 2022 before the Hon'ble High Court. Vide order passed on 05.08.2022 in the aforesaid W.P., the same came to be transferred to this Tribunal for its disposal in accordance with law. Accordingly, it has been registered as T.A. No. 08/2022.

2. The applicant entered into the Police services in the year 2013. After his selection, the applicant was posted on the establishment of Superintendent of Police, Sangali. The request for inter district transfer made by the applicant was allowed and accordingly the applicant was transferred to the establishment of Superintendent of Police, Nanded from the establishment of Superintendent of Police, Sangali. Thereafter, the applicant was relieved from the establishment of Superintendent of Police, Sangali. However, the Superintendent of Police, Nanded i.e. the respondent No. 4 refused to get joined the applicant and cancelled his proposal of inter district transfer vide impugned order on the ground that the applicant did not produce caste

validity / Tribe validity certificate. Aggrieved by the said order, the applicant has filed the present Original Application.

3. It is the case of the applicant that he has already approached the Scheduled Tribe Certificate Scrutiny Committee and submitted the application along with his Tribe certificate for its validity by the said committee on 22.05.2019. It is the contention of the applicant that though the applicant is pursuing his request for deciding validity of Tribe certificate, the Tribe Certificate Verification committee has not yet decided the validity of his Tribe certificate. It is further contention of the applicant that for inaction on the part of Tribe Certificate Verification Committee in deciding the proposal of the applicant for validating his Tribe certificate, he cannot be blamed and on the said ground he cannot be deprived from joining on the establishment of respondent No. 4. According to the applicant, the impugned order passed by the respondent No. 4 is unjust and improper and deserves to be set aside and quashed. It is further contention of the applicant that subject to verification of his Tribe certificate, the respondent No. 4 must have allowed him to resume his duties on his establishment.

4. Learned Counsel for the applicant submitted that in the similar set of facts and circumstances this Tribunal has allowed

the Original Application No. 349/2022 filed by one Sahebrao S/o Sheshrao Pallewad, who was also transferred to the establishment of Superintendent of Police, Nanded in inter district transfer and he was not allowed to resume duties by the Superintendent of Police, Nanded on the similar ground that he was not holding the Tribe validity certificate. Learned counsel submitted that this Tribunal in the order passed in the aforesaid O.A. has quashed and set aside the order passed by the Superintendent of Police, Nanded, and has directed the Superintendent of Police, Nanded to allow the applicant therein to join duties on his establishment. The learned Counsel further submitted that the aforesaid order has been complied with by Superintendent of Police, Nanded.

5. Learned Counsel submitted that the present applicant stands at par with the applicant in O.A. No. 349/2022 decided by this Tribunal. Learned counsel submitted that Superintendent of Police, Nanded has refused to get joined the applicant and has cancelled his proposal for inter district transfer on the same ground that the applicant has failed in producing on record the Tribe validity certificate. Learned counsel, therefore has prayed for allowing the O.A. on the reasons recorded by this Tribunal in O.A. No. 349 of 2022.

6. Though the learned Presenting Officer has prayed for dismissal of T.A., he has not disputed the facts involved in the matter. Learned P.O. submitted for passing appropriate orders in the matter.

7. I have duly considered the submissions advanced by learned counsel appearing for the parties. It is not in dispute that the request made by the applicant for his inter district transfer from the establishment of Superintendent of Police, Sangali to the establishment of Superintendent of Police, Nanded was accepted. There is further no dispute that the applicant could not produce on record the Tribe validity certificate. There is further no dispute that non filing of Tribe validity certificate is the only ground on which the Superintendent of Police, Nanded has refused to get joined the applicant. The contention of the applicant that the matter pertaining to validity of his Tribe certificate is pending before the Tribe Scrutiny Committee, Aurangabad has not been denied or disputed by the respondents. There also appears no dispute that the said proposal for Tribe verification was submitted by the applicant on 22.05.2019. It is also not in dispute that the Tribe Certificate Validity Committee, Aurangabad, has not yet decided the Tribe validity of the applicant. If the Tribe validity committee has not decided the

validity of Tribe certificate of the applicant, no blame can be attributed on the part of the applicant. The respondent No. 4, in the circumstances, should not have refused to get joined the applicant on his establishment and should not have cancelled the proposal of inter district transfer of the applicant.

8. In the O.A. No. 349/2022 this Tribunal was required to deal with the same issue as involved in the present matter. This Tribunal while allowing the O.A. No. 349/2022 has observed thus :-

“16. In such circumstances as above, it is crystal clear that the respondent No.3 i.e. Superintendent of Police, Beed while issuing inter –district transfer order dated 16.03.2022 (Exh. ‘A-4’) to the extent of the applicant has taken care of all the requirements, necessary for inter-district transfer in accordance with G.R. dated 26.10.2017 (Annex. ‘A-3’). As per this G.R., the requirement of permanency certificate and eight years service are necessary factors amongst others. In such circumstances, there was no valid reason for the respondent No.2 i.e. the Superintendent of Police, Nanded to refuse to allow the applicant to join his duties in accordance with transfer order dated 16.03.2022 (Exh. ‘A-4’) issued in accordance with law by the respondent No.3 i.e. the Superintendent of Police, Beed. By the impugned communication dated 22.03.2022 (Exh. ‘A-6’), the respondent No.2 i.e. the Superintendent of Police, Nanded without any valid reason has frustrated the order of inter-district transfer to the extent of the applicant. In view of same, the said impugned order/communication dated 22.03.2022

(Exh. 'A-6') issued by the respondent No.2 i.e. the Superintendent of Police, Nanded is liable to be quashed and set aside being not sustainable in the eyes of law and consequently the applicant shall be entitled for issuances of necessary direction.

17. Learned Advocate for the applicant during the course of arguments submitted that after the applicant was relieved from the establishment of the respondent No.3 i.e. the Superintendent of Police, Beed on 16.03.2022 or 21.03.2022, the applicant had immediately approached the respondent No.2 i.e. the Superintendent of police, Nanded on 22.03.2022 for joining there in view of inter-district transfer dated 16.03.2022 (Exh. 'A-4'), but he was not allowed to join. Since the applicant is relieved from the office of the respondent No.3 i.e. the Superintendent of Police, Beed, the applicant has not been paid his salary. The said submissions were made on behalf of the applicant also in Writ Petition No.4507/2022. In paragraph No.6 of the order passed by the Hon'ble High Court of Judicature at Bombay Bench at Aurangabad dated 21.04.2022, the Hon'ble High Court while disposing of the said Writ Petition, it is observed that while disposing this Original Application, this Tribunal would consider the issue of unpaid wages to the applicant from the date of transfer.

18. I have already observed that the impugned order/communication dated 22.03.2022 (Exh. 'A-6') issued by the respondent No.2 i.e. the Superintendent of Police, Nanded is liable to be quashed and set aside. The applicant shall be entitled for unpaid salary from the date of transfer from the establishment of the respondent No.2 by transfer order dated 16.03.2022. In view of same, it is necessary to issue necessary directions to the respondent No.2 i.e. the Superintendent of

Police, Nanded to take steps for allowing the applicant to join the duties on it's establishment immediately and to pay unpaid salary since the date of transfer. Therefore, I proceed to pass the following order:-

ORDER

The Original Application is allowed in following terms:-

- (A) The impugned order/communication dated 22.03.2022 (Exh. 'A-6') addressed to the respondent No.3 i.e. the Superintendent of Police, Beed by the office of Respondent No.2 i.e. the Superintendent of Police, Nanded is hereby quashed and set aside.*
- (B) The respondent No.2 is directed to allow the applicant to join his duties as per transfer order dated 16.03.2022 (Exh. 'A-4') immediately and to take necessary steps in accordance with law to pay unpaid salary of the applicant since the date of transfer i.e. on 16.03.2022 or 21.03.2022 within the period of one month from the date of this order.*
- (C) No order as to costs."*

9. The facts existing in the present T.A. are quite identical with the facts which existed in O.A. No. 349/2022. In the said matter also though the inter district transfer of the applicant in the said matter was approved; the Superintendent of Police, Nanded refused to get joined the said applicant on the similar ground that the said applicant was not holding the caste validity certificate. As has been submitted by the learned counsel for the applicant, this Tribunal has quashed and set aside the said order in O.A. No. 349/2022 and the Superintendent of Police, Nanded was directed to allow the said applicant to join his duties as per

the transfer order. It is further submitted that the said order has been implemented and the applicant in the said matter has been allowed to join at his transferred place. In the present matter also the Superintendent of Police, Nanded has declined to get joined the applicant though his proposal of inter district transfer has been allowed on the same ground that that he is not holding the Tribe validity certificate. As has come on record the matter of validity of Tribe certificate pertaining to the applicant is pending before the concerned Tribe Certificate Verification Committee. This fact has not been denied or disputed by the respondents. If the Tribe Certificate Verification Committee has not yet validated or taken any decision in regard to the Tribe certificate of the applicant, no blame can be attributed on the part of the applicant. The respondent No. 4 in the circumstances must have allowed the applicant to resume duties on his establishment and while allowing the applicant should have very well put a condition that the permission is allowed to the applicant to resume duties subject to validity of his Tribe certificate. Refusal on part of the respondent No. 2, thus, cannot be sustained and the order passed in that regard on 31.01.2022 deserves to be quashed and set aside. In the result the following order is passed:-

ORDER

- (A) The order dated 31.01.2022 issued by the Respondent No. 4 i.e. the Superintendent of Police, Nanded is quashed and set aside.
- (B) The respondent No. 3 is directed to relieve the applicant within a period of two weeks from the date of this order to facilitate the applicant to resume duties on the establishment of respondent No. 4.
- (C) The respondent No. 4 is directed to allow the applicant to join the duties as per the transfer order dated 25.01.2022 within permissible joining period from the date the applicant is relieved by the respondent No. 3.
- (D) The applicant shall pursue the matter before the Tribe Verification Commission for Verification of his Tribe Certificate.
- (E) Scheduled Tribe Certificate Verification Committee, Aurangabad is requested to decide the validity of Tribe certificate of the applicant viz. Shri Kailas Pralhad Yarmurwad as expeditiously as possible within a period of three months from the date of this order.
- (F) The Original Application stands allowed in the aforesaid terms. No order as to costs

PLACE : AURANGABAD.**DATE : 24.01.2023.**

KPB S.B. T.A. No. 8 of 2022 (WP 3060 of 2022) VDD Transfer

**(P.R. BORA)
VICE CHAIRMAN**