

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 845 OF 2018  
(Subject – Transfer)**

**DISTRICT : NANDURBAR**

**Shri Maharu s/o Bhikaji Patil,** )  
Age : 57 years, Occu. : Deputy )  
Superintendent of Police, (Sub-Divisional )  
Police Office, Shahada Sub-Divisional, )  
R/o. SDPO Office, Oppo. Vikas High )  
School, Dondaicya Road, Shahada, )  
Tq. Shahada, Dist. Nandurbar. ) .. **APPLICANT**

**V E R S U S**

- 1) **The State of Maharashtra,** )  
Through its Secretary, )  
Home Department, )  
Mantralaya, Mumbai -32. )
- 2) **The Director General of Police,** )  
Shahid Bhagat Singh Marg, )  
Kulaba, Mumbai -01. )
- 3) **Mr. Pundlik Sapkale,** )  
Posted as Deputy Superintendent )  
Of Police, Sub Divisional Police )  
Office, Shahada, Oppo. Vikas )  
High School, Police Line Shahada )  
Dist. Nandurabar. ) .. **RESPONDENTS**

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**APPEARANCE** : Shri D.R. Shelke, Advocate for the Applicant.

: Smt. Priya R. Bharaswadkar, Presenting  
Officer for the Respondent Nos. 1 and 2.

: Shri A.S. Deshmukh, learned Advocate for  
respondent No. 3.

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**CORAM : B.P. PATIL, MEMBER (J).**

**DATE : 11.02.2019.**

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**ORAL - ORDER**

1. The applicant has challenged the order dated 29.10.2018 issued by the respondent, by which he has been transferred as Deputy Superintendent of Police, District Caste Scrutiny Committee, Nashik from the post of S.D.P.O., Sub Divisional Office Shahada, Dist. Nandurbar and prayed to quash and set aside the same by filing the present Original Application.

2. The applicant has joined the Police force as Police Sub Inspector on 14.06.1986 and after completing the training, he joined the service as Police Sub-Inspector at Grater Police Bombay Force on 15.06.1987. On 01.03.1999, he was promoted as Assistant Police Inspector and thereafter, he was again promoted as Police Inspector on 17.08.2004. On 31.12.2015, he was promoted as Deputy Superintendent of Police and posted at Jalgaon headquarter. Accordingly, he joined the said post on 25.01.2016. On 07.05.2017, he was transferred from Jalgaon Headquarter to Sub Divisional Office, Shahada, Dist. Nandurbar and since then, he was serving there till issuance of the impugned order dated 29.10.2018. He has hardly completed tenure of 17 months on the post of SDPO, Sub Divisional office Shahada, Dist. Nandurbar. He was not due for transfer, but the

respondents had issued the impugned transfer order dated 29.10.2018 and thereby transferred him from the post of SDPO, Sub Divisional Office Shahada, Dist. Nandurbar to the post of Deputy Superintendent of Police, District Caste Scrutiny Committee, Nashik and the respondent No. 3 had been posted in his place. It is contention of the applicant that his transfer is mid-term and mid-tenure transfer and it is in violation of the provisions of the Maharashtra Police Act. It is his contention that he is due for retirement in the month of April 2019, but the respondents have abruptly transferred him and therefore, he has challenged the impugned order dated 29.10.2018 by filing the present Original Application.

3. The respondent No. 1 has filed his affidavit in reply and resisted the contentions of the applicant. The respondent No. 1 has not disputed the fact that the applicant was transferred from Jalgaon Headquarter to Sub Divisional Office, Shahada, Dist. Nandurbar by the order dated 29.04.2017. It is contended by him that the normal tenure of a police personnel of the rank of Deputy Superintendent of Police or Assistant Commissioner of Police is two years at one place of posting in view of provisions of Section 22N of the Maharashtra Police Act. It is contended by him that the competent authority is empowered to make transfer

of the police personnel in exceptional cases, in the public interest and on account of administrative exigencies in view of the provisions of Section 22N (2) of the Maharashtra Police Act in the midst of term. It is contended by him that the Police Establishment Board No. 1 had been constituted in view of the provisions of the Maharashtra Police Act and the Police Establishment Board No. 1 had recommended the transfer of the applicant on administrative ground and the competent authority effected the transfer of the applicant on account of administrative exigencies. It is contended by the respondent No. 1 that there is no illegality in the impugned transfer order and the same has been issued in accordance with the provisions of the Maharashtra Police Act. Therefore, he prayed dismiss the present Original Application.

4. The respondent No. 3 has adopted the affidavit in reply of respondent No. 1 as his affidavit in reply.

5. I have heard Shri D.R. Shelke, learned Advocate for the applicant, Smt. Priya R. Bharaswadkar, learned Presenting Officer for the respondent Nos. 1 and 2 and Shri A.S. Deshmukh, learned Advocate for respondent No. 3. I have perused the documents placed on record by both the parties.

6. Admittedly, the applicant has joined the Police force as Police Sub Inspector on 14.06.1986 and thereafter, he has been promoted as Police Sub Inspector in Greater Police Bombay Force on 15.06.1987. On 01.03.1999, he was promoted as Assistant Police Inspector and thereafter, he was again promoted as Police Inspector on 17.08.2004. Admittedly, on 31.12.2015, he was promoted on the post of Deputy Superintendent of Police and accordingly, he joined the said post on 25.01.2016. Thereafter, he was transferred at Sub Divisional Office, Shahada, Dist. Nandurbar on 07.05.2017 from Jalgaon Headquarter and since then, he was serving there till issuance of the impugned order dated 29.10.2018. Admittedly, the applicant has hardly completed tenure of 17 months on the post of SDPO, Sub Divisional office Shahada, Dist. Nandurbar. He was not due for transfer and he has not completed normal tenure of posting as provided under section 22N of the Maharashtra Police Act. There is no dispute about the fact that the respondent No. 3 has also not completed his normal tenure of posting at Nashik. Admittedly, the impugned transfer of the applicant is mid-term and mid-tenure transfer.

7. Learned Advocate for the applicant has submitted that the impugned transfer order has been issued by the

respondents in the midst of term without following the provisions of the Maharashtra Police Act. He has submitted that there are no justifiable reasons for transfer of the applicant and no exceptional case has been made out by the competent authority as provided under Section 22N(2) of the Maharashtra Police Act. He has submitted that the applicant has been transferred from the post of S.D.P.O., Sub Divisional office Shahada, Dist. Nandurbar with intention to accommodate the respondent No. 3. He has submitted that the applicant is going to retire on superannuation on 30.04.2019, but he has been transferred by the impugned order and therefore, he prayed to quash and set aside the impugned order by allowing the present Original Application.

8. Learned Advocate for the applicant has submitted that similarly situated person viz. Shri Amol Vilas Gaikwad, who has been transferred by the impugned order, has filed O.A. No. 983/2018 before the Principal Seat of this Tribunal at Mumbai and challenged his transfer order on the similar ground. The said O.A. was allowed and his transfer order has been quashed and set aside. He has submitted that the case of the applicant is squarely covered by the said judgment and therefore, on that

ground also he has prayed to quash and set aside the impugned order.

9. Learned Advocate for the applicant has further argued that the Police Establishment Board No. 1 has not specifically recommended the transfer of the present applicant by recording the reasons and therefore, the impugned transfer order is in contraventions of the provisions of the Maharashtra Police Act. Therefore, he has prayed to allow the present O.A. and to quash and set aside the impugned order.

10. Learned Presenting Officer and the learned Advocate for respondent No. 3 has submitted that the Police Establishment Board No. 1 has been duly constituted in view of the provisions of Section 22C of the Maharashtra Police Act. Duly constituted Police Establishment Board No. 1 held its meeting on 17.10.2018 for transfers and postings of the Deputy Superintendent of Police/ Assistant Commissioner of Police and they have decided to make the transfers of 22 Police personnel including the applicant on administrative ground. They have submitted that the said fact is evident from the minutes of the meeting of the Police Establishment Board No. 1, which is at paper book page Nos. 38 and 39 (both inclusive).

11. Learned Presenting Officer has further submitted that the said recommendation of the Police Establishment Board No. 1 was placed before the competent authority i.e. the Hon'ble Chief Minister, who has holding the portfolio of Home Ministry along with the proposal of the department and the competent authority i.e. the Hon'ble Home Minister approved the same and accordingly, the transfers have been made/effectuated. Learned Presenting Officer has submitted that the transfer of the applicant is made on account of administrative exigencies and therefore, it is in accordance with the provisions of Section 22N(2) of the Maharashtra Police Act. Therefore, learned Presenting Officer has supported the impugned order of transfer.

12. Learned Advocate for respondent No. 3 has submitted that in view of the provisions of Section 22N(2) of the Maharashtra Police Act, the competent authority can make the transfers of the police personnel in the midst of term in exceptional cases, in public interest and on account of administrative exigencies. He has submitted that the impugned transfer order has been issued on account of administrative ground. He has submitted that Section 22N(2) of the Maharashtra Police Act does not provide that the competent authority has to record the reasons in writing while making such



transfers and the provisions of the Maharashtra Police Act are not alike the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (in short “the Transfer Act, 2005”). He has submitted that the competent authority while issuing the impugned order has mentioned that the impugned transfer orders have been issued on administrative ground and the said fact amounts sufficient compliance of the provisions of Section 22N (2) of the Maharashtra Police Act. He has submitted there is no illegality in the impugned order and therefore, he prayed to reject the present Original Application.

13. On going through the provisions of the Maharashtra Police Act, it is crystal clear that the Police Establishment Board No. 1 has been established by the respondents in view of Section 22C of the said Act. The functions of Police Establishment Board No. 1 are mentioned in the provision of Section 22D of the Maharashtra Police Act. In view of the provisions of Section 22D (2)(a) the Police Establishment Board may perform the functions to advice and make recommendations to the State Government regarding the posting and transfer of Police Officers and the State Government shall give due weight to its recommendations.

14. Section 22N(2) of the Maharashtra Police Act empowers the competent authority mentioned therein to make mid-term transfer of any police personnel of the police force in exceptional cases, in public interest and on account of administrative exigencies. The Hon'ble Home Minister i.e. the competent transferring authority may make transfers of the officer of and above the rank of Deputy Superintendent of Police.

15. In the present case, the Hon'ble Chief Minister, who is holding the portfolio of Home Ministry is the competent transferring authority to make transfer of the police personnel of and above the rank of Deputy Superintendent of Police before completion of their normal tenure i.e. in the midst of term in view of the provision of Section 22N (2) of the Maharashtra Police Act.

16. Section 22N(1) of the Maharashtra Police Act provides normal tenure of Police Personnel and Competent Authority. As per Sub-section (1)(a) of Section 22N of the Maharashtra Police Act, a normal tenure of the police Personnel of and above the rank of Deputy Superintendent of Police or Assistant Commissioner of Police is two years at one place of posting. The applicant, as well as, the respondent No. 3 have not completed their normal tenure of posting as provided under Section 22N (1) of the Maharashtra Police Act. Their transfers are mid-term

transfers and therefore, for making their transfers in the midst of term, the competent authority has to make out the case that their transfers have been made in exceptional cases, in the public interest and on account of administrative ground as provided under Section 22N(2) of the Maharashtra Police Act. The normal tenure of police personnel has been specified under Section 22N(1) of the Maharashtra Police Act.

17. On perusal of the documents on record by both the parties, it reveals that the issue regarding posting of Deputy Superintendent of Police or Assistant Commissioner of Police has been discussed in the meeting of the Police Establishment Board No. 1, which held on 17.10.2018. On perusal of the same, it reveals that the Police Establishment Board No. 1 consisted of six Members. The provisions of Section 22C of the Maharashtra Police Act provides that it should consist of five Members. One additional person has been shown as Member of the said Police Establishment Board No. 1. Therefore, from it is crystal clear that the Police Establishment Board No. 1 is not constituted in accordance with the provisions of Section 22C of the Maharashtra Police Act. On going through the minutes of the meeting of the Police Establishment Board No. 1, filed at paper book page Nos. 38 and 39 (both inclusive), it reveals that the

Police Establishment Board No. 1 has recommended the transfers of 22 Police officers on administrative ground. The case of the applicant, as well as, other officers, who were not due for transfer, has not been considered individually by the Police Establishment Board No. 1. No reasons have been assigned and recorded for making mid-term transfer of the applicant. The minutes of the Police Establishment Board No. 1 does not reflect that the transfer of the applicant has been made as exceptional case, in public interest and on account of administrative exigencies. No reasons for making transfer of the applicant before completion of the normal tenure of posting have been mentioned in the minutes of the meeting dated 17.10.2018. In view of the provisions of Section 22N (2) of the Maharashtra Police Act, the reasons need not to be recorded in writing alike the provisions in the Transfer Act 2005, but implied it provides that it ought to have record the reasons in the minutes of meeting of the Police Establishment Board No. 1 for making transfer of Police personnel before completion of their normal tenure. On the basis of the recommendation of the Police Establishment Board No. 1, the competent authority i.e. the Hon'ble Chief Minister passed the impugned order and transferred the applicant. On perusal of the order of Hon'ble Chief Minister for transfers of the Deputy Superintendent of

Police/Assistant Commissioner of Police and the proposal of the department, it reveals that, no reasons have been recorded by the competent transferring authority i.e. the Hon'ble Chief Minister while accepting the recommendation of the Police Establishment Board No. 1 and making mid-term transfer of the applicant. The order of the competent authority is silent regarding the exceptional case, public interest and administrative exigencies for making transfer of the applicant. Therefore, in these circumstances, in my view, the impugned order is not in accordance with the provisions of Section 22N (2) of the Maharashtra Police Act and it is violation of the provisions of Section 22N of the Maharashtra Police Act. The facts on record show that the competent authority has issued the impugned order arbitrarily and maliciously with a view to accommodate the respondent No. 3 in place of the applicant and therefore, the same requires to be quashed and set aside by allowing the present Original Application.

18. In view of the discussions in the foregoing paragraphs, the Original Application is allowed. The impugned order dated 29.10.2018 transferring the applicant from the post of SDPO, Sub Divisional Office Shahada, Dist. Nandurbar to the post of Deputy Superintendent of Police, District Caste Scrutiny

Committee, Nashik is hereby quashed and set aside. The respondents are directed to repost the applicant at his earlier place of posting immediately. There shall be no order as to costs.

**PLACE : AURANGABAD.**  
**DATE : 11.02.2019.**

**(B.P. PATIL)**  
**MEMBER (J)**

**KPB** S.B. O.A. No. 845 of 2018 BPP 2019 Transfer