

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

**ORIGINAL APPLICATION NO. 568 OF 2017**

DIST. : AURANGABAD.

Vishnu s/o Jagannath Gaikwad,  
Age. 35 years, Occu. Service,  
(as Naik Police Constable,  
SDPO Office, Paithan),  
R/o Sanapwadi, Tq. Paithan,  
Dist. Aurangabad.

-- APPLICANT.

**VERSUS**

1. The State of Maharashtra,  
Through its Secretary,  
Home Department,  
Mantralaya, Mumbai-32.
2. The Superintendent of Police,  
Aurangabad (Rural),  
Aurangabad.
3. The Sub Divisional Police Officer,  
Paithan, Dist. Aurangabad.

-- RESPONDENTS

APPEARANCE : Shri A. S. Deshmukh, learned  
Advocate for the Applicant.

: Shri I. S. Thorat, learned Presenting  
Officer for Respondents.

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**CORAM : Hon'ble Shri B. P. Patil, Member (J)**

**JUDGEMENT****{Delivered on 12.03.2018}**

1. The applicant has challenged the impugned transfer order dated 7.7.2017 by which he has been transferred from the office of SDPO Paithan to Police Head Quarter Aurangabad and prayed to quash the same and direct the Respondents to repost him at Paithan by filing the O.A.

2. The applicant is resident of village Sanapwadi Tq. Paithan, which is under the jurisdiction of Pachod Police station. The applicant entered in the service as Police Constable on 9.10.2007 on the establishment of Respondent no.2. He has been designated as Naik Police Constable on 11.7.2011 and posted at Paithan. Accordingly the applicant joined the said post. On 12.6.2015 the Respondent no.2 transferred him from Paithan Police station to office of Respondent no.3. Accordingly the applicant joined the office of Respondent no.3 and since then he is discharging his duties as Naik Police Constable. He had not completed his two tenures on the post of Naik Police Constable at Paithan. Not only this but he has not completed his normal tenure of post in the office of Respondent no.3. He is not due for transfer. In spite of that the Respondent no.2

issued the impugned order dated 7.7.2017 Under Section 22-N (1) & (2) of the Maharashtra Police Act and transferred him from the office of Respondent no.3 to Police Head Quarter Aurangabad. It is contention of the applicant that, it is his midterm and mid-tenure transfer. It is averred by him that, for the mid tenure transfer the Respondent no.2 is not competent authority to transfer him and only State Govt. is the competent authority to transfer him prior to completion of his tenure. It is his further contention that, there is no administrative exigencies, public interest or exceptional case for transferring him midterm. It is his further contention that, no reasons have been assigned by the Respondent no.2 while making his transfer in the midst of term without following provisions of Section 22 N (1) & (2) of the Maharashtra Police Act (hereinafter will be referred as "the Act") his transfer has been effected therefore, being illegal. There was no strict compliance of provisions of Section 22 N (1) & (2) of the Maharashtra Police Act. Therefore, he filed the present O.A. and prayed to quash the impugned order dated 7.7.2017 by filing the O.A.

3. Respondents filed their affidavit in reply and resisted the contention of the applicant. They have denied that, the impugned order is against the provisions of Section 22 N (1) & (2)

of the Maharashtra Police Act. They have denied that, there is noncompliance of the provisions of Section 22 N (1) & (2) of the Maharashtra Police Act. They have denied that, the applicant has not completed his normal tenure of posting at Paithan. It is their contention that, the applicant is serving as Naik Police Constable at Paithan since the year 2011. He has completed his normal tenure of posting at Paithan and he was due for transfer. It is their contention that, Paithan is hometown of the applicant. There are complaints of various types against the applicant. There were adverse confidential reports against him. It is their contention that, there was possibility of creating law and order situation at Paithan because of his posting. Therefore, his transfer has been made. It is their contention that, the proposal regarding the transfer of the applicant has been placed before Police Board at District level and Board considered the proposal regarding transfer of the applicant and the nature of the complaints received against him and thereafter decided to transfer him from Paithan to Aurangabad. It is their contention that, the transfer of the applicant has been made to maintain law and order situation and for administrative exigencies in view of the provisions of Section 22 N (1) & (2) of the Maharashtra Police Act. There was no illegality in the

impugned transfer order. Therefore, he supported the impugned transfer order and prayed to dismiss the O.A.

4. I have heard Shri A. S. Deshmukh, learned Advocate for the applicant and Shri I. S. Thorat, learned Presenting Officer for respondents. I have also perused the affidavit in reply and various documents placed on record by the respective parties.

5. Admittedly, applicant was appointed as Police Constable on the establishment of the Respondent no.2 w.e.f. 9.10.2007. Admittedly, the applicant was designated as Naik Police Constable on 11.07.2011 and posted in the Police Station, Paithan. Thereafter, in the year 2015 he has been posted in the office of Respondent no.3 Sub Divisional Police Officer, Paithan. Admittedly, the applicant has completed tenure of five years at Paithan. He completed his normal tenure of posting at the place of posting i.e. at Paithan and therefore, he was due for transfer. Admittedly, the impugned order has been issued on 7.7.2017. It means it is a midterm transfer. Admittedly, the applicant is resident of Paithan Taluka.

6. Learned Advocate for the applicant has submitted that, the applicant has been transferred on administrative ground by the

impugned order. He has submitted that, the impugned order has been issued by the Respondent no.2 on the recommendation of the Police Establishment Board at district level, but no reasons have been mentioned in the impugned order. He has submitted that, it has been vaguely mentioned in the order that, on the basis of oral complaint and to maintain law and order the applicant has been transferred. He has submitted that, respondents have claimed that, impugned order has been issued in view of the provisions of Section 22 N (1) & (2) of the Maharashtra Police Act, but the statutory compliances as required Section 22 N (1) & (2) of the Maharashtra Police Act have not been made by the respondents. He has submitted that, applicant has been transferred midterm. His children are studying in school and therefore, inconvenience is causing to the applicant due to the impugned order. He has submitted that, the applicant has been transferred only on the basis of alleged complaint. He has submitted that, no opportunity was given to the applicant to defend himself regarding allegations made against him and therefore, the impugned order is illegal and therefore, he prayed to quash the impugned order by allowing the O.A. and to repost the applicant at his earlier posting.

7. Learned Presenting Officer has submitted that, the respondent no.2 constituted a Police Establishment Board at District level in view of provisions of Section 22 J-1 of the Maharashtra Police Act. The proposal regarding the transfer of the applicant has been placed before the Police Establishment Board and after considering the proposal and the complaints received against the applicant and law & order problem the Police Establishment Board decided to transfer the applicant from Paithan to Police Head Quarter and therefore, the impugned order has been issued. He has submitted that, the impugned order has been issued in view of the provisions under Section 22 N (1) & (2) of the Maharashtra Police Act. It has been issued by complying the requirements as provided under Section 22 N (1) & (2) of the Maharashtra Police Act and therefore, he supported the impugned order.

8. He has further submitted that, the applicant is resident of Paithan. He is serving at Paithan since the year 2011. The S.D.P.O. Paithan made report against the applicant on 18.5.2016 stating that, the applicant was involved in theft & illegal transportation of sand and therefore he requested the Superintendent of Police, Aurangabad (Rural) to take necessary

action against him. Learned P.O. has further submitted that, the S.P. Aurangabad (Rural) received several oral complaints about the misconduct of the applicant and therefore the proposal regarding transfer of the applicant on administrative ground and to maintain law and order has been placed before the respondent no.2. Accordingly the respondent no.2 constituted a Police Establishment Board and placed the proposal before the Police Establishment Board for the transfer of the applicant. He has submitted that, Police Establishment Board considered the complaint against the applicant and decided to transfer the applicant from the office of S.D.P.O. Paithan to Police Head Quarter on administrative ground as he completed his normal tenure of posting i.e. five years at Paithan and as there were several complaints against him and accordingly the impugned order has been issued by respondent no.2 on the basis of decision taken by Police Establishment Board. He supported the impugned order and prayed to reject the O.A.

9. On-going through the record it reveals that, the applicant is posted at Paithan w.e.f. 10.7.2011. He has completed his normal tenure of posting at the place, as provided under Section 22 N (1) & (b) of the Maharashtra Police Act. He has been



transferred by impugned order dated 7.7.2017. It is a midterm transfer. No doubt, the State Govt. is empowered to transfer any police personnel prior to completion of his normal tenure in the circumstances mentioned in clause “a” to “e” in view of the proviso to Sub Section (1) of Section 22 (N) of the Maharashtra Police Act. In the instant case, transfer of the applicant is not a transfer prior to completion of his normal tenure and it had not been made by the State Govt. Therefore, the said proviso to Sub Section (1) of Section 22 N of the Maharashtra Police Act is not attracted in this case.

10. In view of the provisions of Sub Section (2) of Section 22 N a competent authority is empowered to make midterm transfer of any police personnel in exceptional cases in public interest and on account of administrative exigencies. Explanation to Sub Section (2) of Section 22 N of the Maharashtra Police Act defines the “competent authority” to make transfer under the said section. As per clause (e) to Explanation of Sub Section (2) of Section 22 N the Police Establishment Board at district level is the competent authority for making transfer of the police personnel up to the rank of Police Inspector for transfer within the district. Second proviso of Sub Section (2) of Section 22 N

empowers the highest competent authority to make transfer of any police personnel without any recommendation of the concerned Police Establishment Board in case of any serious complaint, irregularity, law and order problem.

11. Keeping in mind the above said provisions I have to consider whether the impugned order is issued by the Respondent no.2 by following the provisions as incorporated in Sub Section (2) of Section 22 N. The impugned order has not been issued by the highest competent authority as defined under Explanation to Sub Section 2 of Section 22 N i.e. Hon'ble Chief Minister, therefore, the provisions of second proviso to Sub Section (2) of Section 22 N are not attracted in this case.

12. Since the provisions of second proviso to Sub Section (2) of Section 22 N are not attracted in this case, the only provisions of Sub Section (2) remains to be considered in this case.

13. On perusal of the documents and record and the original file of transfer produced by respondent, it reveals that, the office of the respondent put office note proposing to constitute Police Establishment Board for transfer of the applicant and also proposed to transfer the applicant from Paithan on the ground

that, he has completed his normal tenure of five years, and Paithan is his home town. The transfer of the applicant has also been proposed on the ground of law and order situation and complaints received against him. The said office note / proposal was placed before the Dy.S.P. (Home), who recommended for transfer of the applicant. Additional S. P. had also put his signature approving the recommendation, and thereafter the respondent no.2 Superintendent of Police passed the order on the office note making transfer of the applicant from Paithan to Police Head Quarter. The said order is reproduced as under:-

	<p align="center">“कार्यालयीन टिपणी टिपणी व आदेश विषय:- विनंती व तक्रारी अर्जांच्या बदली बाबत.....</p>	संदर्भ/ शेरा
स.पो.अ. सदर	<p>1) कपया पोह/९४० विष्णु जगन्नाथ गायकवाड, उपविभागीय पोलीस अधिकारी कार्यालय पैठण, यांच्या बदली बाबत महाराष्ट्र पोलीस अधिनियम/१९५१ मधील २२-जे-१ नुसार जिल्हास्तरावरील पोलीस आस्थापना मंडळ स्थापन करण्यात येत आहे.</p> <p>२) महाराष्ट्र पोलीस अधिनियम - १९५१ व मा. पोलीस महासंचालक म.रा. मुंबई यांचे पत्र क्रं.पोमसं/३/अधिसुचना/१४/२०१४/७३ दि. २५.२.२०१५. आणि गृह विभाग यांचे परिपत्रक क्रं न्यायाप्र ३११५/प्रक.८८/पोल-३ दि. १.७.२०१५ नुसार जिल्हा पोलीस आस्थापना मंडळ घटीत करण्यात येउन कलम २२-न (१) व (२) नुसार प्रशासकीय कारणास्तव, कायदा व सुव्यवस्थेचा दृष्टीकोनातून विचार करून, तसेच नमुद पोलीस कर्मचारी यांचे स्वग्राम तालुका पैठण असल्याने आणि त्यांची नेमणुक पैठण येथे दि.१०.७.२०११ पाच वर्ष झाले असल्याने त्यांची प्रशासकीय बदली दिनांक</p>	

<p>१२/०६/२०१५ मध्ये पोलीस ठाणे सोयगाव येथे झाली होती. परंतु त्यांची विनंतीवरून बदली उपविभागीय कार्यालय पैठण येथे करण्यात आलेली आहे. सदर कर्मचारी स्वग्राम तालुका पैठण येथील असल्याने व त्यांच्या विरुद्ध तक्रारी प्राप्त झाल्याने आस्थापना मंडळाच्या शिफारशीनुसार त्यांची बदली करण्याबाबत पुढील आदेशार्थ सादर आहे.</p> <p style="text-align: center;">सही</p> <p style="text-align: center;"><b>बदली आस्थापना मंडळ खालीलप्रमाणे राहिल.</b></p> <p>अध्यक्ष :- श्रीमती डॉ. आरती सिंह पोलीस अधीक्षक, औरंगाबाद ग्रामीण</p> <p>सदस्य :- १. श्रीमती उज्वला बनकर अपर पोलीस अधीक्षक, औरंगाबाद ग्रामीणी. २. श्री चंद्रकांत अलसटवार, पोलीस उप-अधीक्षक (मु.).</p> <p>3) मान्य असल्यास परिच्छेद क्रं. १ ते २ चे अवलोकन होवुन पुढील आदेशास्तव सादर,</p> <p>4) पोलीस उपअधीक्षक (मुं.) :- परि. १/२ प्रमाणी नमूद पोलीस नायक यांची बदली तात्काळ करणे उचीत आहे. करीता शिफारस आहे</p> <p>5) अपर पोलीस अधीक्षक :- <span style="float: right;">सही</span></p> <p>6) पोलीस अधीक्षक :- परि ४ प्रमाणे पीएन ९४० गायकवाड याची बदली पोलीस मुख्यालय येथे करण्यात येत आहे</p> <p style="text-align: center;">सही 6/7.”</p>
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14. One document showing that, minutes of the meeting Police Establishment Board has been produced on record to show that, the proposal was considered in the meeting and the Police Establishment Board has decided to transfer him. On going through the said minutes of the meeting it reveals that, it has been signed by the respondent no.2, Addl. S.P. and Dy.S.P.

(Home), but none of them put date below their signatures. No date has been mentioned on the minutes of the meeting. On going through the same it reveals that, the meeting has been held in past and the transfer of the applicant has been made on the basis of complaint application received against him. On the basis of said decision the Respondent no.2 issued impugned transfer order. The said transfer has been effected to maintain law and order. There is no mention in the minutes of the meeting whether the written complaint had been placed before the Police Establishment Board and they had considered the nature of the allegations made against the applicant in the complaint. Therefore, it is difficult to accept the contention of the respondent that, meeting of the Police Establishment Board has been made on 6.7.2017 or 7.7.2017 before issuing the impugned order. The said document creates doubt about its genuineness. On the contrary, the order passed by the respondent no.2 S. P. Aurangabad (Rural) on the office note on 6.7.2017 shows that, the S.P. Aurangabad (Rural) made up her mind to transfer the applicant and accordingly she passed the order on it making the transfer of the applicant. This shows that, the transfer of the applicant has been made without placing the matter before the Police Establishment Board.

15. No doubt, the Police Establishment Board at district level is empowered to transfer the police personnel up to the rank of Police Inspector within district on the ground specified in Sub Section (2) of Section 22 N of the Act by following the due process of law. If there are serious allegations against the applicant the competent authority is empowered to transfer the applicant by following due process of law, but no such due process of law has been followed by the respondents while transferring the applicant by passing impugned order.

16. No sound reasons have been recorded by the respondents while passing the impugned transfer order. There is nothing on record to show that, the transfer of the applicant has been made in exceptional cases in public interest and on account of administrative exigencies as provided under Sub Section (2) of Section 22 N of the Maharashtra Police Act the impugned order has been issued by the Respondent no.2 arbitrarily without recommendation of the Police Establishment Board in violation of the provisions of Section 22 (N) (2) of the Act.

17. It is contention of the respondents that, the office of the respondent no.2 received report from S.D.P.O. Paithan dated

18.5.2016 for taking necessary action against the applicant alleging that, he was involved in commission of theft and transportation of sand illegally. No doubt, the said report has been sent by S.D.P.O. Paithan to Respondent no.2 in the year 2016. The Police Establishment Board at district level or the competent authority ought to have taken decision to transfer the applicant in the general transfer of the year 2017, but they had not transferred the applicant in the general transfers of the year 2017 on the basis of the report received from S.D.P.O. Paithan. The Respondent no.2 transferred him by the impugned order. The said impugned order is midterm transfer order. No doubt, the competent authority as provided under Section 22 (N) (2) is empowered to make transfers of any police personnel within the district in exceptional cases in public interest and on account of administrative exigencies by recording reasons, but the Police Establishment Board at district level has not recorded sound reasons and exceptional circumstances under which the applicant has been transferred while making his transfer. The respondent no.2 arbitrarily decided to make transfer of the applicant by passing the order on the office note dated 6.7.2017 without following the provisions of Section 22 N (2) merely on the ground that, the report of the S.D.P.O. has been received in the

year 2016 suspecting the involvement of the applicant in the crime of committing the theft of sand and transporting it illegally. Therefore, in my view the impugned order is not in accordance of the provisions under Section 22 N (2) of the Maharashtra Police Act.

18. There is gross violation of provisions of Section 22 N (2) of the Maharashtra Police Act by the respondent while making transfer of the applicant. The impugned transfer order is not in accordance with the provisions of Section 22 N (2) of the Act. Therefore, the said order is not sustainable in the eye of law and it requires to be quashed and set aside by allowing the O.A. Hence the following order.

ORDER.

- i) The Original Application is allowed.
- ii) The impugned order dated 7.7.2017 transferring the applicant from Paithan to Police Head Quarter is hereby quashed and set aside.
- iii) Respondent no.2 is directed to repost the applicant at his earlier posting immediately.
- iv) There shall be no order as to costs.

**MEMBER (J)**