

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 889 OF 2016

DISTRICT: MUMBAI

Miss Ashwini Shamrao Bhosale,
Age: 43 years, Worked as Deputy
Superintendent of Police,
A.C.B., Osmanabad, (on Medical Leave),
Now Transferred to Nagpur,
R/o. 7/5, Yashwant Colony,
Hariyali Village, Ganesh Marg,
Vikhroli (E), Mumbai-83.

.. **APPLICANT**

V E R S U S

- 1) The Director General,
A.C.B., (M.S.), Mumbai,
Through Additional
Superintendent of Police,
Head Quarter, Having Office
At Old Council Hall,
Shahid Bhagatsinh Marg,
Mumbai-400 039.
- 2) Shri B.V. Gawade,
Aged Adult, Occ. Deputy
Superintendent of Police,
A.C.B., Osmanabad,
R/o. Osmanabad.
- 3) The State of Maharashtra,
Through Principal Secretary,
Home Department,
Having Office at Mantralaya,
Mumbai-400 032.

.. **RESPONDENTS**

APPEARANCE : Shri- V.B. Wagh, learned Advocate for the
Applicant.

: Shri- M.S. Mahajan, learned Chief
Presenting Officer for the Respondent
Nos. 1 & 3.

: Shri A.S. Deshmukh, learned Advocate
for respondent no. 2.

CORAM : HON'BLE SHRI J.D. KULKARNI, MEMBER (J)

J U D G M E N T

(Delivered on this 23rd day of January, 2017.)

This Original Application was, initially filed, before the Principal Seat of this Tribunal at Mumbai and it was numbered as O.A. No. 683 of 2016. Subsequently, vide order dated 21.11.2016, this O.A. was transferred to this Bench and it has been renumbered as O.A. No. 889 of 2016.

2. The Applicant, Smt. Ashwini Shamrao Bhosale, is the Deputy Superintendent of Police and she has challenged her order of transfer dated 3.6.2016; whereby the applicant has been transferred from Osmanabad to Nagpur. The impugned order of transfer is at paper book page no. 13 (Exhibit-'A'). From the impugned order, it seems that in all 12 Superintendent of Police and Deputy Superintendent of Police of P.I. cadre, were transferred. It seems that it has been mentioned in the said order that, the officers were transferred as per the Government

Notification dated 26.02.2015 and also on their request. Admittedly, the respondent no. 1 issued Corrigendum on 28.07.2016 and stated that some orders were issued on the request of the officers and rest orders were issued on the administrative ground. The impugned corrigendum is at paper book page no. 40. The applicant has claimed following reliefs:-

“9(a) By a suitable order, this Hon’ble Tribunal may be pleased to set aside the order dated 3.6.2016 passed by the Respondent No. 1 (EXHIBIT-A) under which he transferred the Petitioner on the basis of the purported request of the Petitioner from the post of Deputy Superintendent of Police, A.C.B., Osmanabad to A.C.B., Nagpur and order dated 3.6.2016 passed by the Respondent No. 1.

9(b) By a suitable Order/directions, this Hon’ble Tribunal may be pleased to quash and set aside the decision dated 28.07.2016 of the Police Establishment Board of the Anti Corruption Bureau, holding that the earlier order dated 3.6.2016 stands corrected and accordingly it may be noted that the transfers of the officers at Sr. Nos. 1, 2, 8 and 9 are effected on request and the officers at Sr. Nos. 3 to 7 and 10 to 12 are effected on the administrative ground and accordingly, the Petitioner be granted all the consequential service

benefits, as if the impugned order has not been passed.”

3. From the admitted facts on record, it seems that the applicant was appointed as Police Sub Inspector (direct recruitment) on 2.12.1996. She was promoted to the post of Assistant Police Inspector in the year 2009 and Police Inspector in the year 2014. On 3.7.2014, she was given posting as Deputy Superintendent of Police, A.C.B. on one-step promotion and was posted at Osmanabad and then was promoted in the regular cadre of Police Inspector and thereafter, she was posted as Deputy Superintendent of Police at Osmanabad. She is serving in the A.C.B. since 03.07.2014.

4. The learned Advocate for the applicant submits that the applicant has not completed her tenure of three years in A.C.B. at Osmanabad, since she was posted there on 3.7.2014 and has been transferred vide impugned transfer order dated 3.6.2016, which was subsequently corrected vide Corrigendum dated 28.07.2016. It is therefore, stated that the transfer of the applicant is against the provisions of the Maharashtra Police Act.

5. The respondent no. 1 has filed its affidavit in reply. It is stated that the applicant has served in A.C.B., Osmanabad Unit

from 14.06.2011 to 3.6.2014 and she was transferred to A.C.B., Dist. Beed on the original rank as Police Inspector vide order dated 25.06.2014 by D.G., A.C.B., M.S., Mumbai. However, she requested that she be transferred back to A.C.B., Osmanabad Unit, as Deputy Superintendent of Police, and therefore, she was posted to A.C.B., Osmanabad Unit from 3.7.2014 till 3.6.2016. The applicant is therefore, serving in the A.C.B., Osmanabad Unit from 14.06.2011 to 3.6.2016 i.e. for approximately five years. In fact, she is serving at Osmanabad since 1999 and therefore, it cannot be said that she was not due for transfer.

6. As regards impugned order of transfer, it is stated that the work of the applicant at A.C.B., Osmanabad was not satisfactory and there was many enquiries and investigations were kept pending unnecessarily by the applicant and therefore, Superintendent of Police, A.C.B., Aurangabad submitted default report to the Director General, A.C.B., M.S., Mumbai on 17.07.2016 and even though the explanation of the applicant was called and the case of the applicant was considered before the Establishment Board and the applicant was transferred on administrative ground.

7. The learned Advocate for the applicant has also filed rejoinder affidavit and submitted that she is serving as Deputy Superintendent of Police, A.C.B., Osmanabad since 3.7.2014. It is a Specialized Branch and therefore, she should have been allowed to complete her tenure of 3 years in A.C.B., Osmanabad as Deputy Superintendent of Police.

8. The learned Chief Presenting Officer submits that the applicant's case was recommended by the Regional Secretary and the applicant tried to bring pressure on the competent authorities. The sur-rejoinder is also filed by the respondent no. 2 in this regard.

9. Heard Shri V.B. Wagh, learned Advocate for the Applicant, Shri M.S. Mahajan, learned Chief Presenting Officer for the Respondent Nos. 1 & 3 and Shri A.S. Deshmukh, learned Advocate for respondent no. 2. I have also perused the application, affidavit, affidavit in reply, sur-rejoinder, rejoinder affidavit, citations and various documents placed on record by the respective parties.

10. The private respondent no. 2 i.e. Shri B.V. Gawade, has joined as a party respondent in the present O.A., since he has been posted in place of the applicant.

11. The learned Advocate Shri V.B. Wagh, for the applicant submits that the applicant has been transferred from Osmanabad to Nagpur on the post of Deputy Superintendent of Police, though she has not completed her tenure of Deputy Superintendent of Police at Osmanabad. He has also invited my attention to the Section 22N of the Maharashtra Police Act and particularly Section 22N (1)(c), which reads as under:-

“22N. Normal tenure of Police Personnel, and Competent Authority

(1).....

(a).....

(b).....

(c) for Police Officers of the rank of Police Sub- Inspector, Assistant Police Inspector and Police Inspector a normal tenure shall be of two years at a Police Station or Branch, four years in a District and eight years in a Range, however, for the Local Crime Branch and Special Branch in a District and the Crime Branch and Special Branch in a Commissionerate, a normal tenure shall be of three years.”

12. The learned Advocate for the applicant submits that the applicant was working in Special Branch in Osmanabad District and therefore, normal tenure of the applicant shall be of three years. The applicant has been transferred to Osmanabad on the post of Deputy Superintendent of Police on 3.4.2014 as he

was promoted on one-step promotion in that cadre and the impugned order of transfer has been passed on 3.6.2016 and therefore, she has been transferred within a span of two years and she has not completed three years of her tenure.

13. From the record, it seems that even though, the applicant was posted in A.C.B. Branch at Osmanabad on the post of Deputy Superintendent of Police (one-step promotion) at Osmanabad on 3.7.2014, it is material to note that she has been working in the A.C.B. at Osmanabad from 14.06.2011 to 3.6.2014 continuously, whether on the post of Police Inspector or as Deputy Superintendent of Police or so.

14. The learned Advocate Shri A.S. Deshmukh, for respondent no. 2 invited my attention to the definition of the word “Specialized Agencies” and as per the section 2(14A-1):-

“[(14A-1) “Specialized Agencies” means Crime Investigation Department, State Intelligence Department, Protection of Civil Rights, Anti-Corruption Bureau, State Reserve Police Force, Anti-Terrorist Squad, Highway Traffic and Training Directorate;]”

He submits that the entire tenure of the applicant in the A.C.B. on whatever post shall be taken as her tenure. If it is

so taken, it will be clear that the applicant is working continuously in A.C.B., Osmanabad from 14.06.2011 till the date of her transfer i.e. 3.6.2016.

15. It is material to note that from 14.06.2011, the applicant has worked as A.P.I in A.C.B. at Osmanabad and on one-step promotion she was transferred to A.C.B., District Beed on the original rank of P.I. However, the applicant has filed representation and on her representation her order of transfer was cancelled and she was allowed to work at Osmanabad. It is material to note that for such cancellation of her order of transfer, the applicant brought recommendation of M.L.A. Shri Sujisingh Thakur, Regional Secretary, B.J.P., Maharashtra and on his recommendation, the applicant's transfer to Beed was cancelled. The copy of the said recommendation is also placed on record at paper book page no. 44 (Exhibit R-4).

16. The respondent State has also placed on record one show cause notice issued to the applicant dated 19.07.2016, which is at paper book page no. 45 (Exhibit 'R-5'), from which it seems that the applicant's work was not satisfactory and many enquiries and investigations were kept pending by the applicant

and therefore, she was asked to explain as to why her increment for one year shall not be stopped.

17. Thus, from the aforesaid circumstances, the facts are taken into consideration, it seems that the applicant has continuously working in A.C.B. at Osmanabad since 14.06.2011. She was promoted to the post of Assistant Police Inspector and was kept in the same department. Prior to that, she has worked at Osmanabad also in her capacity as PSI, API and PI. Thus, the applicant has completed more than five years in ACB i.e. Specialized Agency in different cadres and even as Deputy Superintendent of Police, she has completed almost two years till the passing of impugned order of transfer. In such circumstances, I do not find any force in the submission made by the learned Advocate for the applicant that her transfer is mid-term.

18. The learned Advocate for the applicant submits that the impugned transfer order of the applicant is punitive in nature, as the respondents have stated that there were complaints against the applicant. I am unable to accept this contention for the simple reason that the respondents have described in details the reasons as to why it was necessary to transfer the applicant

on administrative ground. The respondents have not stated in the impugned order of transfer that the applicant was being transferred on the basis of complaints filed against her and therefore, the submission that the transfer is punitive in nature cannot be accepted. The respondents have also placed on record the minutes of the meeting held by the Establishment Board, wherein the applicant's transfer was considered. It is dated 2.6.2016 and it is placed on record at paper book page no. 47. In the said minutes, the applicant's tenure in A.C.B. Department at Osmanabad has been considered from 30.05.2011. I do not find any illegality in considering the applicant's tenure in A.C.B. Department at Osmanabad from 14.06.2014 as the said department falls within the cadre of "Specialized Agencies". As already stated, as per Section 22(N)(c) normal tenure of Police personnel in "Specialized Agencies" is of three years. The applicant has already completed more than three years in A.C.B. Department at Osmanabad and therefore, the applicant's transfer cannot be said to be mid-term.

19. The learned Advocate for the applicant invited my attention to one order dated 7.5.2014, a copy of which is placed on record at paper book page no. 153, from which it seems that the applicant was earlier transferred to ACB at Sindhudurga and

the applicant got that order cancelled subsequently. Thus, from the record it seems that the applicant wants to serve at Osmanabad only that too in A.C.B. She got managed to cancel her earlier said order of transfer and not only that, for that purpose she has also got recommendation from a politician. Considering all these aspects and the fact that the applicant has served almost for five years in A.C.B., Special Branch at Osmanabad, I do not find any fault or illegality in the impugned order of transfer of the applicant.

20. The learned Advocate for the applicant has placed on various citations such as Somesh Tiwari Vs. Union of India (UOI) and Ors. reported in AIR 2009 SC 1399 in Civil Appeal No. 7308 of 2008 (Arising out of SLP (Civil) No. 3516 of 2007) decided on 16.12.2008, O.A. No. 191/2015 decided by the Principal Seat of this Tribunal on 26.10.2015 in the case of Shri Narayan Mohan Sarangkar Vs. The Superintendent of Police and others, O.A. No. 466 & 467 of 2016 decided by Principal Seat of this Tribunal on 12.07.2016 in the case of Shri Arun Ramchandra Pawar & Ors. Vs. The State of Maharashtra and others, judgment reported in 2006(2) Bom. C.R. 827 in the case of State of Maharashtra & others vs. Prakash Pandharinath Patil & Others delivered on 29.07.2005.

21. I have carefully gone through all these citations and for the reasons discussed in the foregoing paragraphs, I am satisfied that the applicant's transfer cannot be said to be in contravention of any of the provisions of the Maharashtra Police Act and therefore, citations are not applicable to the present set of facts.

22. The learned Advocate for the Applicant invited my attention to the judgment delivered by the Principal Seat of this Tribunal in O.A. No. 385 of 2015 in the case of Shri Gopinath Bapurao Lokhande Vs. The Additional Director of General of Police on 1.12.2015. The learned Advocate for the applicant submits that in this judgment it has been held that as per Section 22 J-3 (1) of the Maharashtra Police Act, the Government shall, by notification in the Official, Gazette, constitute for the purpose of this Act, a Board to be called the Police Establishment Board at the levels of Specialised Agencies, The Tribunal has taken a view that publication in the Official Gazette is mandatory and in the said case the respondents have not notified the constitution of the Police Establishment Board at the level Specialized Agency (C.I.D.) in the Official Gazette, such a Board was held to be not constituted legally under the Maharashtra Police Act.

23. In the present case, in the impugned order of transfer it has been mentioned that the Board has been established as per the Government notification dated 26.02.2015. The very opening part of the said order reads as under:-

“ पोलीस महासंचालक, महाराष्ट्र राज्य, मुंबई यांचे आदेश क्रमांक पोमसं/४/१०/७ सपोनि सार्वत्रिक बदल्या २०१६/२६/२०१६ व आदेश क्रमांक पोमसं/३/१०/६/सार्वत्रिक बदल्या-१६/३७/२०१६ दिनांक २४/०५/२०१६ अन्वये खालील नमूद पोलीस अधिकारी लाचलुचपत प्रतिबंधक विभाग, येथे बदलीवर हजर झाले आहेत.

महाराष्ट्र शासन, राजपत्र असाधारण भाग - ४, असाधारण क्र. ५, दि. २६/०२/२०१५ अन्वये व महाराष्ट्र पोलीस (सुधारणा) अधिनियम २०१५ मधील कलम २२ जे (३) मध्ये नुसार स्थापन केलेल्या लाचलुचपत प्रतिबंधक विभाग महाराष्ट्र राज्य, मुंबई यांचे अस्थापना मंडळ यांना प्रदान असलेल्या अधिकाराचा वापर करून, शासन निर्णय गृह विभाग दि. २०-५-१९८५ मधील तरतुदीच्या आधीन राहून खालील नमूद पोलीस निरीक्षक/सहायक पोलीस निरीक्षक, यांची एक टप्पा पदोन्नतीवर पोलीस उपअधिष्ठाक/पोलीस निरीक्षक पदी तात्पुरत्या स्वरूपात त्यांच्या नावासमोर दर्शविल्याप्रमाणे नेमणूक करण्यात येत आहे. ”

24. Even for argument sake, it is accepted that the Board was not notified in the Official Gazette as per the Section 22(L) Erstwhile Police Establishment Boards cease to exist, the Police Establishment Board shall continue to operate as if the same are constituted under this Act. Section 22L reads as under:-

“22L Erstwhile Police Establishment Boards cease to exist

On the constitution of the Police Establishment Board No. 1, Police Establishment Board No. 2, Police Establishment Board at Range Level and Police Establishment Board at Commissionerate Level under

this Act, the erstwhile Police Establishment Board constituted by the Home Department under the Government Resolution, dated the 15th July 2013 shall cease to exist:

Provided that, the decisions and recommendations made by the respective Police Establishment Boards shall continue to operate as if the same are made by the respective Police Establishment Boards constituted under this Act.”

25. In view of this provision, even if it is accepted that the board was not published in the Official Gazette still orders can be passed by the Board, which has been notified under the Act till duly constituted board is established and the same is published in the Gazette notification. Statutory machineries cannot be restrained to exercise its statutory functions for want of such notification.

26. On a conspectus of discussions in foregoing paragraphs, I therefore, do not find any merits in the O.A. and hence, I pass following order:-

ORDER

The Original Application stands dismissed with no order as to costs.

(J.D. KULKARNI)
MEMBER (J)