

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 518 OF 2018

DISTRICT : PALGHAR

Shri Vikas Shankarrao Totawar,)
Transferred from the post of Sub)
Divisional Police Officer, Vasai,)
Tal-Vasai, Dist-Palghar,)
R/o: Sun City, Mirchandani Garden,)
Block no. 102, Vasai [W],)
Palghar.)...**Applicant**

Versus

1. The State of Maharashtra)
Through the Additional Chief Secretary,)
Home Department, having office at)
Mantralaya, Mumbai 400 032.)
2. The Superintendent of Police,)
Dist-Palghar,)
Having office at Palghar.)
3. Dr Ashwini Sayajirao Patil,)
Government service, transferred in)
Place of the Petitioner from the post of)
Assistant Commissioner of Police,)
Nagpur City.)...**Respondents**

Shri B.A Bandiwadekar, learned advocate for the Applicant.

Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents.

None for Respondent no. 3

CORAM : **Shri Justice A.H Joshi (Chairman)**

DATE : **19.10.2018**

ORDER

1. Heard Shri B.A Bandiwadekar, learned advocate for the Applicant, Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents no 1 & 2 and none for Respondent no. 3.

2. By the present Original Application the applicant has challenged the transfer order dated 8.6.2018. The applicant's name is at serial no. 81 in the order dated 8.6.2018.

3. Applicant is transferred from his last posting as Sub Divisional Police Officer, Vasai Sub Division, Dist-Palghar to the post of Dy. Superintendent of Police, Police Head Quarters, Palghar.

4. The applicant has challenged the transfer order and interalia averred in para 6.12 of O.A as follows:-

“6.12 That the provisions of Section 22C of the said Act talks about the composition of the Police Establishment Board no. 1 of which sub section (1) is important which is mandatory in its nature and therefore, the Notification, if any, issued by the Respondent no. 1 about constitution of the Police Establishment Board no. 1. That the same shall be required to be published in the official Gazette. That according to the knowledge of the Petitioner this is not done and therefore, basically any such decision about the transfer of the Petitioner if taken by the said Board and then by the Respondent no. 1 is void, ab-inito, invalid and non-est.”

(Quoted from page 9 of O.A)

5. Section 22C of the Maharashtra Police Act reads as follow:-

“22C. Police Establishment Board no. 1

(1) The State Government shall, by notification in the Official Gazette, constitute for the purposes of this Act, a Board to be called the Police Establishment Board No. 1.

(2) The Police Establishment Board No. 1 shall consist of the following members, namely:-

- (a) Additional Chief Secretary (Home) ...Chairman;
- (b) Director General and Inspector General of Police ...Vice-Chairman;
- (c) Director General, Anti-Corruption Bureau ...Member;
- (d) Commissioner of Police, Mumbai. ...Member;
- (e) Additional Director General and Inspector General of Police [Establishment] ...Member-Secretary

Provided that, if none of the aforesaid members is from the Backward Class, then the State Government shall appoint an additional member of the rank of the Additional Director General and Inspector General of Police belonging to such Class.

Explanation :- For the purposes of this sub-section, the expression "Backward Class" means the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Special Backward Category and Other Backward Classes."

(Quoted from page 1.55 of The Maharashtra Police Act, 2015)

6. The proviso to Sec 22C makes it mandatory that a Member of the Committee ought to be from the Backward Class category as specified therein.

7. The averment contained in para 6.12 has been answered by the Government in the affidavit in reply by Respondent no. 2 in an evasive manner, which reads as follows:-

"13. With reference to contents of Paragraph 6.12, I say that contents of para 6.12 are not relating to Respondent no. 2. It is relating to Respondent no. 1."

(Quoted from page 72 of O.A)

8. The applicant herein had filed a rejoinder and he has averred in para 18 as follows:-

“18. I say that even otherwise the composition of the said Board which is mandatory in nature as laid down under Section 22(2)(C) was not as such. This is because all the following 5 members including Chairman belong to open category and none from Reserved Category, namely, (a) Mr Sudhir Shrivastav, (b) Mr Mathur, (c) Mr Phansalkar, (d) Mr. Padsalgikar and (e) Mr. Sandip Bishnoi. I say that as per the proviso to Section 22(C) it is mandatory that such Board must consists of one of the member should belong to Backward Class which if not there, the State Government shall appoint such member and it is only thereafter the meeting of the said Board can be held. That according to the best of knowledge of the Petitioner that this is conspicuously absent in the present case and therefore, any such decision taken by the said Board is bad in law, and therefore, the transfer order based thereof is equally liable to be quashed and set aside.”

(Quoted from page 154 of O.A)

9. In the aforesaid background, after hearing on 4.10.2018, this Tribunal, directed the Additional Chief Secretary, Home Department, Mantralaya, Mumbai to examine the matter, study the objects behind incorporation of Section 22C of the Maharashtra Police Act, and take corrective steps if desired, and if corrective steps are not taken, to file affidavit.

10. Today, learned C.P.O has tendered affidavit of Shri Sunil Porwal, IAS, the Additional Chief Secretary, Home Department, Mantralaya, Mumbai.

11. It is obvious that because no corrective steps are taken, affidavit in reply has been filed.

12. In the affidavit in reply filed by Shri Sunil Porwal, I.A.S, Additional Chief Secretary, Home Department, he has admitted the position that the procedure required to be followed as mandated by Section 22C of Maharashtra Police Act has not been followed. Paras 3 & 4 of the affidavit in reply of Shri Sunil Porwal, read as follows:-

“3. I say and submit that as per Section 22C of the Maharashtra Police Act 1951, prescribed procedure was not followed while issuing the impugned order. Therefore, it is necessary to recall proposal from the office of the Director General of Police, Maharashtra State, Mumbai.

4. I say and submit that the subsequently the same proposal will be placed before reconstituted P.E.B no. 1 of which one member will be from Backward Class and fresh order of the applicant will be issued.”

(Quoted from pages 180 & 181 of O.A)

13. In fact by the order of this Tribunal dated 4.10.2018, an opportunity to take corrective measures was afforded.

14. Learned C.P.O was called to state as to whether she knows the reason as to why corrective measure is not taken. Learned C.P.O refrains from answering and pleads that affidavit duly drafted and affirmed is received from the Additional Chief Secretary, Home and learned C.P.O is asked to file it.

15. It is pertinent to note that though this Tribunal had directed the Additional Chief Secretary, Home Department, to study the matter, examine aims and object and to take corrective measures, a statement is made that prescribed procedure has not been followed. This attitude on the part of Additional Chief Secretary, Home Department, exhibits the level of respect to the aims and objects which warranted a suo moto corrective step, instead of soliciting a proposal from the D.G.P. In fact the P.E.B No-I is a matter of device or machinery within the ambit and control of the Additional Chief Secretary and he ought to have upon reading the Original Application suo moto taken corrective action. Having failed to do so, Additional Chief Secretary, Home Department, ought to have taken corrective steps after he got an opportunity to examine the matter after an eye opening direction from this Tribunal. However, the Additional Chief Secretary chose to take a circuits way.

16. It is thus evident that the office of learned C.P.O is not consulted. Mostly, even Law & Judiciary Department is not consulted, else such approach would not emerge.

17. It appears as if the Officers are averse of taking corrective measure at their own level and every time they look forward for corrective action in the form of order from the Tribunal or Court.

18. In fact and in law, the justice is the duty and obligation of the State, and Courts and Tribunals are there for undoing unjust acts. Such situation ought not occur nor should it ever recur.

19. In the result, following order is passed:-

- (a) Original Application succeeds and impugned order dated 8.6.2018, qua the applicant is quashed and set aside.
- (b) In view of the fact that the impugned order is quashed and set aside, the applicant would be permitted to join duty without waiting for final receipt of the order of this Tribunal and barely on communication by learned C.P.O or applicant producing steno copy of the order.
- (c) In the facts and circumstances of the case, parties are directed to bear their own costs.

Sd/-
(A.H. Joshi, J.)
Chairman

Place : Mumbai
Date : 19.10.2018
Dictation taken by : A.K. Nair.