

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 138 OF 2023

DISTRICT:- PARBHANI

Vikas S/o. Ramesh Kharat,
Age-34 years, Occu.: Police Constable,
B.No.1382, R/o. Janpriya Colony,
Parbhani

.. APPLICANT.

V E R S U S

1. The Director General of Police,
M.S. Mumbai, State Police
Headquarter, Sahid Bhagatsingh
Road, Kulaba, Mumbai-400 001.
2. The Special Inspector General of Police
Nanded, Range Nanded
Basweshwar Chowk, Navin Kautha,
Cidco Road, Nanded-431603
3. The Superintendent of Police, Beed
Near Civil Hospital, Barshi Road,
Beed-431122
4. The Superintendent of Police,
Parbhani, Near Shivaji Maharaj
Statue, Station Road,
Parbhani-431401.

.. RESPONDENTS.

APPEARANCE : Shri O.D. Mane, learned counsel for
the applicant.
: Shri B.S. Deokar, learned Presenting
Officer for the respondent authorities.

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

DATE : 10.08.2023

O R D E R

Heard Shri O.D. Mane, learned counsel for the applicant
and Shri B.S. Deokar, learned Presenting Officer for the
respondent authorities.

2. The applicant has filed the present Original Application seeking quashment of the order dated 3.2.2023 issued by respondent no. 4, whereby applicant has been shifted from Bomb Detection and Disposal Squad (for short 'BDDS') to Police Headquarters of Parbhani. The applicant has also sought the declaration to the effect that the applicant's present cadre is of the Police Constable and that he no more belongs to Bandsman cadre.

3. Vide order dated 26.7.2016 the applicant was appointed on the post of Police Constable Bandsman on the establishment of Superintendent of Police, Beed. Applicant was selected in the police recruitment held in 2015-16 for appointment on the establishment of Superintendent of Police, Beed District. The applicant worked on the said post of Police Constable Bandsman on the establishment of District Superintendent of Police, Beed till 28.9.2020. The applicant's native place is Pedgaon in Taluka and District Parbhani. Applicant's father has expired long back and his mother is suffering from paralysis, as stated in the application. For taking care of his ailing mother, the applicant preferred a request application to the Superintendent of Police, Parbhani for inter-district transfer. The Superintendent of Police, Parbhani accepted the request of

the applicant. The Superintendent of Police, Beed, therefore, relieved the applicant on 28.9.2020. The applicant accordingly resumed duty at the S.P. Office, Parbhani. The S.P., Parbhani vide his order dated 3.11.2020 gave posting to the applicant as Police Constable at the Police Headquarter at Parbhani. Accordingly the applicant performed the duties during the period between 3.11.2020 and 8.10.2022 as Chamber Attendant and Bodyguard of S.P., Parbhani. Vide order dated 8.10.2022 under the signature of S.P., Parbhani the applicant was posted in the BDDS, Parbhani. The S.P., Parbhani sent him for training to Maharashtra Intelligence Academy, Pune. The applicant accordingly completed the training and received the certificate of training and thereafter re-joined the BDDS at Parbhani. However, vide order dated 3.2.2023 the S.P., Parbhani transferred the applicant from BDDS to Police Headquarter, Parbhani. It is the grievance of the applicant that the order dated 3.2.2023 was an order of midterm and mid tenure transfer. It is the further contention of the applicant that the impugned order was issued by the S.P., Parbhani in violation of provisions U/s 22N(1)(b) of the Maharashtra Police Act, 1951. It is the contention of the applicant that the S.P., Parbhani had given acceptance for inter-District transfer of the applicant for the post of Police Constable and not for the post of

Police Constable Bandsman. It is the further contention of the applicant that the S.P., Parbhani therefore, could not have posted the applicant in Bandsman squad as Bandsman. It is also the contention of the applicant that the applicant's cadre for the post of Bandsman was restricted to the limits of Beed District. It is the further contention of the applicant that the S.P., Parbhani acted contrary to the contents in the acceptance letter. In the circumstances, the applicant has filed present O.A. seeking quashment of the impugned order.

4. The Superintendent of Police, Beed, who is respondent no. 3 in the present O.A., has filed affidavit in reply and has opposed the averments raised and prayers made in the O.A. Respondent no. 3 has further mentioned that the S.P., Parbhani accepted the request of the applicant for inter-district transfer and posted the applicant as Police Constable.

5. Respondent nos. 1, 2 & 4 have filed joint affidavit in reply. According to these respondents, since the applicant was recruited as Police Constable Bandsman, he cannot be transferred to any executive post of Police Department. It is further contended that there is no infirmity in the impugned order.

6. Shri O.D. Mane, learned counsel appearing for the applicant submitted that the request of the applicant for his inter-district transfer was accepted by the S.P., Parbhani and the applicant was then posted by him at Police Headquarter, Parbhani as the Police Constable. Learned counsel further submitted that the S.P., Parbhani then posted the applicant in the BDDS w.e.f. 8.10.2022. Learned counsel further submitted that the S.P., Parbhani also sent the applicant for training to the Maharashtra Intelligence Academy, Pune. After the training was completed the applicant re-joined the BDDS. Learned counsel further submitted that thereafter respondent no. 4 i.e. the S.P., Parbhani transferred the applicant from BDDS to Police Band. According to the learned counsel, the applicant could not have been posted on the post of Bandsman as because the applicant's cadre of Bandsman was for Beed District only and the applicant was, therefore, not liable to be posted on the post of Bandsman in Parbhani District. Learned counsel submitted that the impugned order is in violation of Section 22N(1)(b) of the Maharashtra Police Act. Learned counsel in the circumstances has prayed for allowing the O.A.

7. Learned Presenting Officer has opposed the submissions made on behalf of the applicant. Learned PO submitted that

the applicant was selected for the post of Bandsman and as such could not have been transferred to the cadre of Police Constables. Learned PO further submitted that by inter-district transfer the candidates working as Police Constable Bandsman can be transferred to the post of Bandsman alone in their inter-district transfer. Learned PO, therefore, prayed for dismissal of the O.A.

8. I have duly considered the submissions made on behalf of the applicant and the respondents. The contentions raised by the applicant and the prayers made by him are difficult to be accepted. It is not in dispute that, the applicant entered into the Police force as the Bandsman on the establishment of District Police Beed. He worked on the said establishment as Bandsman from the date of his appointment i.e. 26.7.2016 till 28.9.2020. His request for inter-district transfer i.e. from Beed to Parbhani was accepted by the S.P., Parbhani and the applicant was posted at the Police Headquarters, Parbhani as a Police Constable. While working as Police Constable the applicant was asked to work on Bomb Detection and Disposal Squad. Admittedly, the applicant was also sent for BDDS training and after completing the said training was re-posted in the said Squad. Thereafter, vide the impugned order the

applicant was brought back to the Police Headquarters, Parbhani in the cadre of Police Constable Bandsman. In the circumstances, it is the contention of the applicant that, the S.P., Parbhani i.e. the respondent no. 4 while accepting his request for inter-district transfer when had taken him on the establishment of Parbhani District Police as the Police Constable and had also posted him in BDDS, he could not have been transferred to the cadre of Bandsman.

9. It is not in dispute that initial recruitment of the applicant is in the Police Band as a Bandsman and was made under the Maharashtra Police Constables (Recruitment) Rules, 2011. Rule 3(2)(C)(iv) thereof provides that Police personnel recruited in the Police Band will not be eligible for transfer to executive duties, but will be eligible for inter-district transfer in the same cadre, i.e. in a Band unit. Considering the provision as aforesaid it is evident that though the applicant was eligible for inter-district transfer and accordingly his request for inter-district transfer was accepted by the S.P., Parbhani, the applicant was liable to be transferred in the Band unit of the Parbhani District Police. Merely on the ground that he was asked to perform the duties of Police Constable and was also asked to work in BDDS will not change his cadre in which he was born. As provided under rule

3 (2)(C)(iii) the police personnel recruited in the Police Band has also to perform other police duties at the Police Headquarters. However, performing such duties by the Police personnel recruited in the Police Band will not vest him with any right to be treated in the cadre of Police Constables.

10. The further contention of the applicant that he was in the cadre of Bandsman so long he was on the establishment of District Police, Beed, also cannot be accepted. The applicant cannot deny that he entered into the Police force as a Bandsman on the establishment of District Police, Beed and was taken on the establishment of District Police Parbhani by way of transfer. It was not an appointment of the applicant as Police Constable on the establishment, Parbhani. In the circumstances, the further contention of the applicant that while shifting him to Police headquarters in the Band unit, the S.P. Parbhani (respondent No. 4) did not observe the procedure prescribed under Section 22N(1)(B) and, hence the said transfer is liable to be set aside, also does not carry any force and deserves to be rejected.

11. After having considered the facts and circumstances as above, it does not appear to me that any case is made out by

the applicant to cause any interference in the impugned order.

In the result, the following order is passed: -

ORDER

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

VICE CHAIRMAN

O.A.NO.138-2023 (SB)-2023-HDD-transfer

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 138 OF 2023

DISTRICT:- PARBHANI

Vikas S/o. Ramesh Kharat,
Age-34 years, Occu.: Police Constable,
B.No.1382, R/o. Janpriya Colony,
Parbhani

.. APPLICANT.

V E R S U S

1. The Director General of Police,
M.S. Mumbai, State Police
Headquarter, Sahid Bhagatsingh
Road, Kulaba, Mumbai-400 001.
2. The Special Inspector General of Police
Nanded, Range Nanded
Basweshwar Chowk, Navin Kautha,
Cidco Road, Nanded-431603
3. The Superintendent of Police, Beed
Near Civil Hospital, Barshi Road,
Beed-431122
4. The Superintendent of Police,
Parbhani, Near Shivaji Maharaj
Statue, Station Road,
Parbhani-431401.

.. RESPONDENTS.

APPEARANCE : Shri O.D. Mane, learned counsel for
the applicant.

: Shri B.S. Deokar, learned Presenting
Officer for the respondent authorities.

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

DATE : 10.08.2023

OPERATIVE ORDER

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

VICE CHAIRMAN