

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.384 OF 2016**

**DISTRICT : PUNE**

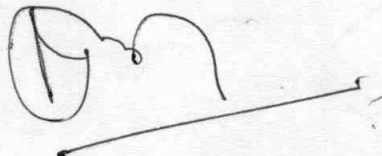
Shri Kishor Pandurang Chaudhari. )  
Working as Assistant Police Inspector, )  
R/a. 'Shiv Amrut', S.No.72/1, Samarth )  
Nagar, Opp. Ratan Sweet Home, )  
New Sangavi, Pune - 411 027. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through the Chief Secretary, )  
Mantralaya, Mumbai - 400 032. )
2. The Additional Chief Secretary. )  
Home Department, Mantralaya, )  
Mumbai 400 032. )
3. The Director General of Police. )  
M.S, Shahid Bhagatsing Marg, )  
Coloba, Mumbai 400 001. )
4. The Commissioner of Police. )  
Pune City. )...**Respondents**

**Smt. Punam Mahajan, Advocate for Applicant.**

**Smt. A.B. Kololgi, Presenting Officer for Respondents.**



**P.C. : R.B. MALIK (MEMBER-JUDICIAL)**

**DATE : 10.11.2016**

### **JUDGMENT**

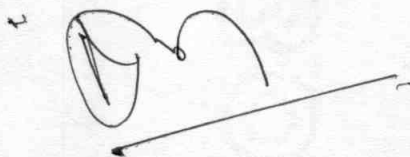
1. The Applicant calls into question one part of the order dated 21.4.2016 (Annexure 'A-9', Page 38 of the Paper Book (PB)) whereby he came to be promoted from the post of Police Sub Inspector (PSI) to Police Inspector (PI) and transferred from Pune City to Nagpur City. The challenge is to the posting aspect of the matter while he is happy in so far as the promotion is concerned.

2. The matter is governed by the provisions of the Maharashtra Police Act, 1951 as amended on 15<sup>th</sup> April, 2015. I have perused the record and proceedings and heard Smt. Punam Mahajan, the learned Advocate for the Applicant and Smt. A.B. Kololgi, the learned Presenting Officer for the Respondents.

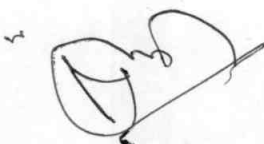
3. A formidable point which in fact is the conclusive undoing of the Applicant is that he has been promoted and posted at Nagpur City from Pune City. The Applicant has made a reference to the provisions of Section 22 N of the Police Act and he has fully reproduced it in Para 6.19 of



the Original Application (OA). The words, "subject to the promotion or superannuation" which appear in Section 22 N(1)(a) and again in Section 6(1)(a)(i) thereof would make it very clear that even as normal tenure of the PSIs and PIs would be as indicated therein (2 years and six years) but it will be subject to promotion or superannuation which would make it quite clear that if it is a case of promotion and posting by a composite order, then neither the Applicant nor the judicial forum can dissect the order okaying the order of promotion and yet assailing and scrutinizing the order of posting in the name of transfer. That in my view is the significance of the word, "subject to the promotion or superannuation" in the said provision. Here, it is not as if, it is a simple case of transfer from Pune City to Nagpur City. The Applicant has been promoted and post promotion, he has to be posted somewhere in accordance with the relevant provisions of the Divisional Cadre Structure and Divisional Cadre Allotment for direct appointment by nomination to the post of Group 'A' and Group 'B' (Gazetted and Non-gazetted) of Government of Maharashtra Rules, 2010 (Divisional Cadre Allotment Rules) now superseded. Smt. Mahajan, the learned Advocate for the Applicant told me that even if the said Rules of 2015 are applicable in view of the new Rules enforced from 20<sup>th</sup> April, 2015, 2010 Rules themselves will

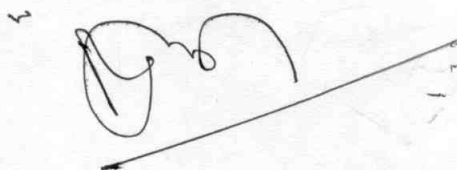


continue to govern the parties. I find that these are the Rules framed under the proviso to Article 309 of the Constitution. Deriving validity from the same source are the Rules that were enforced on 16<sup>th</sup> July, 2015. The Proviso to Rule 2 mandates that the said Rules in so far as they apply to Group 'A' and Group 'B' (Gazetted and Non-gazetted) in Police Force and Sales Tax Department, "shall be kept in abeyance for a period of one year from the date of publication of these Rules in the Maharashtra Government Gazette". It is, therefore, very clear that at the time the impugned order was made, the 2015 Rules were under suspended animation as it were. In this view of the matter, even if one were to consider the submission of Smt. Mahajan above referred to, in the first place, I find that the Rules effectuated from 8<sup>th</sup> June, 2010 have been expressly superseded by the Rules effectuated on 20<sup>th</sup> April, 2015. Smt. A.B. Kololgi, the learned Presenting Officer in that connection invited reference to a Judgment rendered by the 2<sup>nd</sup> Division Bench of this Tribunal which spoke through me in **OA 763/2015 with MA 500/2015 (Shri Milind S. Garud and others Vs. Secretary, Excise Department, State of Maharashtra and 2 others, dated 4.5.2016)**. In my opinion, the suspension of the Rules of April, 2015, therefore, would not by its own force enliven the Rules of 8<sup>th</sup> June, 2010 because they have been



superseded and there is no express provision in any of these Rules providing for the revival of 2010 Rules in view of the suspension of April, 2015 Rules. Still further, however, I do not think that the reliance on the proviso to Rule 4 of the superseded Rules of 2010 would have any application to the present facts and I am not inclined to agree with Smt. Mahajan, the learned Advocate for the Applicant in that behalf.

4. It is an indisputable factual position that the Applicant came to be transferred more than once and in fact, on four occasions during the past about two years. Smt. Mahajan was considerably aggrieved by this kind of, "treatment" meted out to the Applicant. I find that once the transfer was made in view of the parliamentary elections and then it became necessary to call for the choice of the Applicant if one might use that expression in view of the order of this Tribunal rendered by the then learned Administrative Member in **OA 795/2014 (Shri Sameer G. Shaikh Vs. D.D. & I.G, Maharashtra State, Mumbai (a copy whereof is at Annexure 'A-4', Page 21 of the PB)**. That apart, in my view, the most important source of authority is the provision enshrined in Section 22 N of the Police Act which has already been discussed above and which is not a strong point for the Applicant. That



being the state of affairs, the submission of the learned Advocate for the Applicant in my view cannot prevail.

5. Further, according to the Applicant, his order of promotion is temporary, and therefore, he should have been accommodated at Pune itself. He has further set out the facts as to how according to him, a number of Officers similarly placed as he himself have been accommodated at their respective places where they were posted before promotion. In the Affidavit-in-reply filed by Shri Anil P. Sawant, Desk Officer in the Office of DGP, M.S, the explanations have been given as to how and why the said Officers were so accommodated. In one case, it appears that the concerned Officer was handicapped and further according to the Respondents orders are always issued by using the Marathi word of which the English equivalent word is, "temporary" implying thereby perhaps that the said word is not to be literally construed or taken. The issue of the point of the minimum tenure is not disputed, but it is emphasized that this is a case of promotion and posting in which regard, I am in agreement with the Respondents.

6. I must, however, note that the basis of this particular Judgment is the fact that the impugned order in





relation to the Applicant cannot be bisected accepting one part and rejecting the other. However, if the Applicant were not to accept the promotion, then apart from any other eventuality that might take place in accordance with the relevant Rules, he may not have to be transferred to Nagpur as PI. This position was not and cannot be disputed. But I must make it very clear that I give no directions in the matter and I have only explained the plain legal position obtaining in the present set of facts.

7. The upshot is that there is no substance in the Original Application and the same is accordingly dismissed with no order as to costs.

Sd/-

**(R.B. Malik)**  
**Member-J**  
**10.11.2016**

Mumbai  
Date : 10.11.2016  
Dictation taken by :  
S.K. Wamanse.