

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.426 OF 2019

Shri Anvar Shakil Shaikh,)
Age 35 years, Occ. Assistant Sub Insector)
In S.R. P.F. Group No.XI, Navi Mumbai)
Transferred from Training Company to “c”)
Company of the said Group.)...**Applicant**

Versus

The Commandant, S.R. P.F. Group XI,)
Navi Mumbai, Camp Balegaon, Dist. Thane)...**Respondents**

Shri A. V. Bandiwadekar, Applicant in person, Applicant in person.

Smt. Kranti Gaikwad, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 31.03.2021

JUDGMENT

1. The Applicant has challenged the transfer order dated 13.07.2020 whereby he was transferred from the Training Unit to “C” company (Outdoor Unit) of S.R.P.F. invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985

2. Shortly stated facts giving rise to this application are as under:-

The Applicant is serving in the cadre of Assistant Sub Inspector in SRPF, Group No.XI, Navi Mumbai on the establishment of Respondent namely the Commandant, SRPF, Navi Mumbai XI. He was working there since his transfer order dated 17.07.2019. He is entitle for five years tenure in Training Unit in terms of Section 21(1)(b) of Maharashtra Police Act. However, the Respondent abruptly

by impugned transfer order dated 13.07.2020 transferred him mid-term and mid-tenure from Training Unit to 'C' company (Outdoor duty Unit). The Applicant has challenged the transfer order dated 13.07.2020 *inter-alia* contending that the Respondent-Commandant, SRPF, Navi Mumbai was not competent authority to transfer him. According to him for such mid-term and mid-tenure transfer, there has to be recommendation of Police Establishment Board (PEB) at the level of SRPF being Specialized Agency as contemplated under Section 22J-3 read with 22J-4 of Maharashtra Police Act. He therefore, contends that the impugned transfer order is unsustainable in law.

3. The Respondent resisted the Original Application by filing Affidavit-in-Reply *inter-alia* contending that there is no illegality in transfer order. In this behalf, Respondent contends that the Applicant was negligent in discharging duties assigned to him and, therefore, PEB at the level of Commandant in its meeting dated 13.07.2020 unanimously recommended him to transfer him from Training Unit to 'C' company for outdoor duty.

4. Shri A. V. Bandiwadekar, learned Counsel for the Applicant sought to assail the impugned order contending that the Applicant being serving in SRPF under the provisions contained in Section 22J-3, there has to be recommendation for transfer of the Applicant by PEB duly constituted for Specialized Agency under the Chairperson of Additional Director General of Police in view of the Notification issued by the Home Department, Government of Maharashtra, Mumbai dated 18.01.2016. Whereas in the present case, the Applicant is transferred by so called PEB headed by Commandant at his level, and therefore, impugned transfer order is in contravention of express provisions of Maharashtra Police Act and rendered it unsustainable in law.

5. Per contra, Smt. Kranti Gaikwad, learned P.O. sought to support the impugned order contending that the PEB at the level of Commandant is Competent Authority for such mid-term and mid-tenure transfer of the Applicant and there is no illegality in the impugned order.

6. In view of the submission advanced at bar, the question posed for consideration is whether the Applicant is transferred by duly constituted competent authority as contemplated under the provisions of Maharashtra Police Act.

7. Needless to mention that in view of the decision of the Hon'ble Supreme Court and directions given therein in **2006 (8) SCC 1 (Prakash Singh Vs. Union of India & Ors.)**, substantial and important amendment were carried out in Maharashtra Police Act whereby mechanism is provided for regular as well as mid-term transfer for police personnel at different levels. The PEB is established at the District Level, Commissionerate level as well as at the level of Specialized Agencies. The Applicant being working in SRPF, it is treated as Specialized Agency alike CID, State Intelligent Department, Anti Corruption Bureau etc. In this behalf, Section 22J-3 and 22J-4 are material which are as follows:-

“22J-3. Police Establishment Board at Levels of Specialized Agencies

(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 at the Levels of Specialized Agencies, namely 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.

(2) The Police Establishment Board at the Level of Specialized Agencies shall consist of a Chairperson, as the Head of the concerned Specialized Agency and three senior-most Police Officers of that Specialized Agency:

Provided that, if none of the aforesaid members is from the Backward Class, then the concerned Head of the Specialized Agency shall appoint an additional member of any senior most Police Officer 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.

Section 22J-4 Functions of Police Establishment Board at Levels of Specialized Agencies.

The Police Establishment Board at the Levels of Specialized Agencies shall perform the following functions, namely-

- (a) The respective Board shall decide all transfers and postings of all Police Personnel to the rank of Police Inspector within the Specialized Agencies.*
- (b) The respective Board shall be authorized to make appropriate recommendations to the Police Establishment Board No.2, regarding the postings and transfers out of the Specialized Agency, of the Police Personnel to the rank of Police Inspector.*

Explanation :- For the purposes of this section, the expression “Police Personnel” means a Police Personnel to the rank of Police Inspector.”

8. Section 22N-2 provides for mid-term transfer of police personnel in exceptional cases, in public interest and on account of administrative exigencies by the Competent Authority. As per Section 22N(2)(d) for transfer of police personnel up to the rank of Police Inspector within the respective range, Commissionerate or Specialized Agency, the competent authority is PEB at the level of Specialized Agency.

9. As rightly pointed out by the learned Counsel for the Applicant in view of Section 22J-3 and 22J-4, the Government of Maharashtra, Home Department by Notification dated 18.01.2016 has established Police Establishment Board at State Reserve Police Force headed by the Director General of Police. The said Notification reads as under:-

1	Additional Director General of Police (SRPF)	Chairperson
2	Special Inspector General of Police (SRPF)	Member
3	Deputy Inspector General of Police (HQ)	Member
4	Commandant (SRPF)	Member

10. Thus, it is explicit that for transfer of police personnel in SRPF, the competent authority is PEB as Specialized Agency for transfer of police personnel serving in SRPF.

11. Whereas in present case, the Applicant is transferred by Commandant at his level only. Perusal of minutes of PEB (Page 42 of PB) reveals that the PEB was consists of of Shri Sachin Patil as Chairperson/ Commandant, Shri R.M. Mahapadi, Member, Assistant Commandant and Shri M.B. Alhat, Member –Office Superintendent. *Ex-facie*, the aforesaid PEB was not constituted in consonance with the provisions of Maharashtra Police Act adverted to above. Indeed, in terms of Section 22J-3 and J-4, the Government has already notified in Official Gazette that PEB at the level of Specialized Agency namely SRPF headed by the Additional Director General of Police, SRPF. This being the position, the PEB constituted by the Respondent at this level cannot be said in consonance with the provisions of Maharashtra Police Act.

12. Learned P.O. sought to contend that the Commandant, SRPF Navi Mumbai has constituted PEB at his level at par with PEB at District Level. According to her, the Commandant was empowered to constitute PEB at his level alike District Superintendent of Police for

the transfer of police personnel in district as contemplated under Section 22J-1 of Maharashtra Police Act.

13. Section 22J-1 of Maharashtra Police Act is as under:-

Police Establishment Board at District Level

(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 at District Level.*

(2) *The Police Establishment Board at District Level shall consist of the following members, namely-*

(a) *District Superintendent of Police* ... *Chairperson;*

(b) *Senior-most Additional Superintendent Of Police* ... *Member;*

(c) *Deputy Superintendent of Police (Head Quarter)**Member-Secretary;*

Provided that, if none of the aforesaid members is from the Backward Class, then the District Superintendent of Police shall appoint an additional member of the rank of the Deputy Superintendent of Police belonging to such class.

Explanation – For the purpose of this sub-section, the expression “Backward Class” means the Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Special Backward Category and Other Backward Classes.

14. Thus, perusal of Section 22J-1 made it clear that there has to be Notification in Official Gazette for constitution of PEB at district level and one of the members must be from Backward Class as a mandatory requirement. Thus, firstly one of the members must be from the Backward Class and secondly there has to be Notification in Official Gazette for constitution of such PEB at District Level.

15. In present case, even assuming for sake of moment that the Commandant was empowered to constitute the PEB at his level, in that event also alike the PEB at District Level, law requires that one of

the Members must be from Backward Class and there has to be Notification to that effect by the Government in Official Gazette.

16. However, in the present case, admittedly there is no such Notification in the Official Gazette to validate the PEB constituted by the Commandant at his level and secondly none of the Member is from Backward Class.

17. In view of aforesaid discussion, it is crystal clear that the PEB constituted by the Commandant at his level is not in consonance with law. Needless to mention that when the law requires to do a thing in particular manner and has laid down elaborate mechanism for the same then it has to be done in that particular manner only. As stated above, amendments in Maharashtra Police Act were carried out to ensure that police personal shall have fix tenure of the post held by them and mid-term transfer should be made in exceptional cases on account of administrative exigencies by the Competent Authority only. The rationale behind it is that the transfers should not be made at the whims or caprice of the executive and there should be check and balance in the system so that it should function in fair and transparent manner. However, in the present case, the Respondent usurped the powers of competent authority at the level of Specialized Agency which rendered impugned transfer order unsustainable in law.

18. Thus, impugned order is totally indefensible and liable to be quashed. Hence, the following order:-

ORDER

- (A) Original Application is allowed.
- (B) Impugned transfer order dated 13.07.2020 is quashed and set aside.
- (C) The Respondent is directed to repost the Applicant in Training Unit within two weeks from today.
- (D) No order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Place : Mumbai
Date : 31.03.2021
Dictation taken by : VSM
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