

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.550 OF 2018**

**DISTRICT : SANGLI**

Shri Shivanand H. Bobade. )  
Age : 32 Yrs., Working as Police Constable )  
transferred from Kavathe Mahankal Police )  
Station to Kokrud Police Station, District : Sangli,) )  
R/o. Kavathe Mahankal, District : Sangli. )...**Applicant**

**Versus**

The Superintendent of Police, Sangli. )...**Respondent**

**Mr. B.A. Bandiwadekar, Advocate for Applicant.**

**Ms. S.T. Suryawanshi, Presenting Officer for Respondent.**

**CORAM : SHRI A.P. KURHEKAR, MEMBER-J**

**DATE : 02.01.2019**

**JUDGMENT**

1. The Applicant has challenged his transfer order dated 29.05.2018 from Kavathe-Mahankal Police Station to Kokrud Police Station, District Sangli invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.
2. Shortly stated the facts giving rise to this application are as follows :

The Applicant is serving under the administration of Respondent (Superintendent of Police, Sangli) on the post of Police Constable. By order dated 31.05.2017, he was transferred to Kavathe-Mahankal Police Station on his request and since then, the impugned order dated 29.05.2018, he was working at that place. As such, he has not completed normal tenure of five years at Kavathe-Mahankal Police Station. However, suddenly, by impugned order dated 29.05.2018, the Respondent No.1 transferred the Applicant from Kavathe-Mahankal Police Station to Kokrud Police Station, District : Sangli. This transfer has been challenged in this O.A.

3. The Applicant contends that, he has not completed normal tenure of five years as provided under Section 22(1)(b) of Maharashtra Police Act, and therefore, transfer is mid-term and mid-tenure. He further contends that, there is no compliance of Section 22-J (1)(1) of Maharashtra Police Act, since there is no Notification of formation of Police Establishment Board (PEB) in Official Gazette as per the mandate of the law. In impugned order, he has been shown transferred on administrative ground invoking the provisions of Section 22-N(2) of Maharashtra Police Act. However, it is not clarified what constitute administrative exigency, and therefore, he cannot be transferred without assigning reasons for the same. He further contends that, his transfer on alleged default report or misconduct of the Applicant is punitive in nature, and therefore, it is not sustainable in law. There is no compliance of the instructions contained in Circular issued by Special Inspector General of Police, State of Maharashtra dated 08.11.2017 which requires preliminary enquiry about alleged misconduct or misbehavior before transferring the Police Personnel. Whereas, the Applicant has been transferred without giving an opportunity, and therefore, the transfer is arbitrary, illegal and unsustainable in law and facts. On these pleadings, the Applicant prayed to quash the impugned order dated 29.05.2018.

4. The Respondent resisted the application by filing Affidavit-in-reply (Page 18 of the Paper Book) inter-alia denying the allegations made by the Applicant that the transfer is punitive or arbitrary. It is not in dispute that the Applicant has not completed normal tenure of five years at Village Kavathe-Mahankal and he has been transferred mid-term and mid-tenure. However, the Respondent sought to justify the transfer order contending that P.I, Kavathe-mahankal has submitted a default report dated 29.05.2018 attributing misconduct and corruption to the Applicant during his tenure at Kavathe-Mahankal Police Station. Therefore, the matter was placed before the PEB at District level in its meeting dated 29.05.2018 and Board after considering the report of P.I, Kavathe-Mahankal decided to transfer the Applicant, as his behavior and conduct was maligning the image of Police Department. Therefore, his transfer was found necessary in the public interest and for administrative exigency. The Respondent denied that there is any irregularity or illegality in the constitution of PEB at District level. He further sought to contends that, earlier also, in the period of 2010-2012 while the Applicant was working at Kavathe-Mahankal, he was found guilty for misconduct as was found drunk on duty. He was dealt with departmentally and three increments were withheld without cumulative effect on further increments. On these pleadings, the Respondent sought to deny that the transfer order is punitive or stigmatic and contends that the transfer is made on observance of the provisions of Maharashtra Police Act.

5. The Applicant has filed Affidavit-in-rejoinder thereby refuting the contentions raised by the Respondent in its reply (Page No.34 of P.B.). In Rejoinder, the Applicant contends that, on 29.05.2018, he and P.I. Mr. Gaikwad attached to Kavathe-Mahankal Police Station were called by Deputy Superintendent of Police to remain present in the office of Respondent. Accordingly, they attended the office of Respondent. There, Mr. Gaikwad orally complained to the Respondent alleging that the Applicant is not punctual in his

duties and indulged in some illegal act, and therefore, warning be given to him. However, the Respondent directed Mr. Gaikwad to prepare default report immediately and submit the same to him. On instructions of Respondent, Mr. Gaikwad prepared report and submitted to the Respondent. The Respondent immediately made endorsement on the report 'transferred to Kokrud Police Station' and put his signature and date below the endorsement. With this narration, the Applicant contends that the transfer is arbitrary and malafide. According to Respondent, the minutes of meeting of CSB thereafter prepared only to justify his action. As regard instances of the year 2010-2012, the Applicant contends that it being of past, are not relevant in the present matter. He further contends that, in fact, he was relieved on 28.05.2018 itself i.e. even before the passing of impugned transfer order. As such, the transfer order is arbitrary, illegal and not sustainable in law and facts.

6. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Ms. S.T. Suryawanshi, learned Presenting Officer for the Respondents.

7. Having gone through the pleadings and on submissions of learned Counsels appeared for the parties, the following facts can be said undisputed.

- (i) The Applicant has not completed five years normal tenure as Police Constable at Kavathe-mahankal Police Station as provided under Section 22-N(1)(b) of Maharashtra Police Act.
- (ii) The PEB in its meeting dated 29.05.2018 decided to transfer the Applicant in view of default report dated 29.05.2018 submitted by the P.I, Kavathe-mahankal Police Station.

8. Shri B.A. Bandiwadekar, learned Advocate for the Applicant challenged the impugned transfer order mainly on the following grounds.

- (A) Absence of Notification of form of PEB at district level in the Official Gazette by the Government as mandated under Section 22-J(1) of Maharashtra Police Act.
- (B) Absence of Member from Backward Class on PEB as required by proviso to Section 22-J(1).
- (C) Absence of compliance of instructions issued in the Circular dated 08.11.2017 issued by Special Inspector General of Police, State of Maharashtra which requires preliminary enquiry of the Police Personnel for transfer on the ground of misconduct or misbehavior.
- (D) In view of above mere invoking Section 22-N(2) of Maharashtra Police Act will not validate or legalize the impugned transfer order.

9. Per contra, Ms. S.T. Suryawanshi, learned Presenting Officer sought to justify the impugned transfer order contending that, it was necessitated in view of default report submitted by P.I. Mr. Gaikwad, Kavathe-Mahankal Police Station and accordingly, recommended by PEB at District level. Amidst the final argument, the learned P.O. has also produced some additional documents on record which were objected by the learned Advocate for the Applicant. The objection was over-ruled and the documents were taken on record, which are at Page Nos.51 to 73 of P.B. As per these documents about subsequent events, the preliminary enquiry was conducted in respect of alleged misconduct of the Applicant in the examinations conducted by MPSC for the post of PSI. As per preliminary enquiry report dated 17.11.2018, the Applicant has filled-in 15 forms on-line by using mobile numbers of his family members and by creating 15 independent e-mail addresses, but he found appeared in the examination from one place only. However, in preliminary enquiry, the said conduct of the Applicant held not befitting of Police Personnel as it was intended to gain undue advantage and amount to malpractice.

10. In view of above, the learned P.O. has submitted that, considering the past conduct of the Applicant of 2012, the report dated 29.05.2018 submitted by Mr. Gaikwad, P.I, Kavathe-Mahankal Police Station and subsequent preliminary report dated 17.11.2018 pertaining to MPSC examination, the Applicant does not deserve any relief from this Tribunal and the application is devoid of merit.

11. The amendments made in 2015 in Maharashtra Police Act in deference to the recommendations made by Hon'ble Supreme Court in ***Prakash Singh and others Vs. Union of India and others (2006) 8 SCC Page 1*** provides for the normal tenure of Police Personnel as well as compliance of requisite conditions for mid-term or mid-tenure transfer. As per Section 22-N(1)(b), the normal tenure of Police Constabulary shall be of five years for one place of posting. Admittedly, in the present case, the transfer being mid-term as well as mid-tenure, there has to be compliance of provisions contained in Section 22-J(1)(1) which mandates that, the State Government shall by Notification in the Official Gazette constitute for the purpose of the said Act, a Board to be called "Police Establishment Board at District Level" and as per proviso, one of the Member of PEB should be from the Backward Class. In case, if none of the Member is from Backward Class, then District Superintendent of Police shall appoint additional Member of the rank of Deputy Superintendent of Police belonging to such class. As regard mid-term or mid-tenure, care has been taken by introducing Section 22-N(2) which provides that, in exceptional cases, in public interest and on account of administrative exigencies, the competent authority shall make mid-term transfer of any Police Personnel. As such, when law requires the performance of such acts in a particular manner, then it has to be complied with in that manner only and no latitude is permissible.

12. Now, turning to the present case significantly, the Respondent has not produced any material on record to show that the PEB at District level has been

notified in the Official Gazette. The Notification of the Official Gazette is not mere formality, but it is mandatory requirement of the law. Secondly, there is nothing to show that, one of the Member of the PEB is from Backward Class. When this specific query was raised to the learned P.O, she was helpless and at pain to concede that, there is no such compliance. As such, it can be assumed that, there is no Notification in the form of PEB at District level in the Official Gazette and secondly, the requirement that one of the Member should be from Backward Class is not complied with. This being the position, the very formation and constitution as well as competence of PEB to transfer the Applicant is in question which goes to the root of the matter.

13. The learned P.O. made feeble attempt to contend that the transfer of the Applicant was necessitated in view of default report submitted by Mr. Gaikwad, P.I, Kavathe-Mahankal Police Station, and therefore, the PEB has recommended the transfer on account of administrative exigency. However, there is no proper compliance of procedure to be followed in case of transfer on complaint, and therefore, the submission advanced by the learned P.O. has to be rejected.

14. The Respondent has produced the copy of default report dated 29.05.2018 on the basis of which, PEB allegedly recommended the transfer for administrative exigencies. It is cryptic report, the text of which is as follows :

“महोदय,

उपरोक्त विषयास अनुसरुन सादर की, पो.काँ/१४४ नेमणूक कवठेमहांकाळ पोलिस ठाणे हे त्यांना दिलेले कर्तव्य सोडून नजर चुकवून नागज रोडवर येणारे जाणारे वाळूच्या गाडयांकडून पैसे स्विकारत असल्याची माहिती मिळत आहे. त्यांच्या या वर्तनाबाबत त्यांना टोकले असता आम्हास मानसिक त्रास देवूनका अशा स्वरुपाचे वर्णन करीत असून यामुळे पोलिस प्रतिमा खराब होत आहे. तरी आपले या आदेशान्वये उचित कारवाई होण्यास विनंती आहे.”

(Transferred to Kokrud PS)

Sd/-  
29.05”

15. Significant to note that, on the report itself, there is endorsement and order of Respondent as produced above. In this reference, it is necessary to look into Affidavit-in-rejoinder filed by the Applicant. In this Rejoinder, he has specifically stated that, on 29.05.2018, the Respondent called him as well as Mr. Gaikwad, P.I, Kavathe-Mahankal Police Station and they attended the office of Respondent. In the Office, the Respondent asked Mr. Gaikwad to submit his default report after his oral complaint to the Respondent. Then and there, Mr. Gaikwad prepared default report and immediately thereon, the Respondent made endorsement and passed order "transferred to Kokrud Police Station" and put his signature as well as date below the order. As such, it shows that the Respondent first passed order of transfer and then called meeting of PEB.

16. Furthermore, even in case of complaint of misconduct or misbehavior, there cannot be abrupt transfer without following the procedure laid down in Circular dated 08.11.2017 issued by Special Inspector General of Police. As per this Circular, in case of mid-term or mid-tenure transfer on the complaint of misconduct or misbehavior, the competent authority i.e. Police Commissioner or Superintendent of Police, as the case may be, is required to make preliminary enquiry. It further provides in that contingency, the statement of concerned Police Personnel to be affected is also required to be recorded. In preliminary enquiry, if the allegations are substantiated, then only the matter requires to be placed along with enquiry report before the PEB. Not only that, the PEB is also required to satisfy about the compliance referred to above in its minutes and to record the same in its minute. However, in the present case, admittedly, there is no such preliminary enquiry to substantiate the default report submitted by Mr. Gaikwad, P.I. On the contrary, there are reasons to say that the order of transfer was passed even before placing the matter for consideration of PEB. Even assuming for a moment that the endorsement "transferred to Kokrud" appearing on default report is made by Respondent subsequent to the recommendation of



PEB. In that event also, the impugned order is not sustainable, as there is absolutely no compliance of the Circular dated 08.11.2017 referred to above which provides for preliminary enquiry in case of mid-term transfer on complaint. Suffice to say, there is no contravention of Circular dated 08.11.2017.

17. As such, there is no compliance of Notification of PEB in the Official Gazette with one of the Member from Backward Class as mandated by Section 22-J(1) of Maharashtra Police Act and secondly, in absence of preliminary report to substantiate the allegations of misconduct or misbehavior attributed to the Applicant, the transfer order is not sustainable in law.

18. In so far as the documents about preliminary enquiry report pertaining to alleged malpractice attributed to the Applicant in MPSC Examination and preliminary enquiry report dated 17.11.2018 is concerned, that itself does not validate or legalize the transfer order. The preliminary enquiry report about alleged incidence is subsequent incident and it cannot be related to the impugned transfer order. The Respondent may take into consideration independently for further suitable action as per law. At any cost, it cannot supply the omissions or cure illegality, crept in impugned transfer order for the reasons discussed above.

19. The necessary corollary for the aforesaid discussion leads me to sum-up that the impugned order is not sustainable in law and facts and deserves to be interfered with. Hence, the following order.

### **ORDER**

(A) The Original Application is allowed.

- (B) The impugned order dated 29.05.2018 is hereby quashed and set aside.
- (C) The Applicant be reposted at his original place of posting within two weeks from today.
- (D) No order as to costs.

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

Mumbai

Date : 02.01.2019

Dictation taken by :

S.K. Wamanse.

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