

**BEFORE IN THE MAHARASHTRA ADMINISTRATIVE
TRIBUNAL
MUMBAI BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.809 OF 2017

(Subject : Transfer)

DISTRICT : AURANGABAD

Ganesh Trimbak Sable)
Presently posted as Naik Police Constable)
Gangapur, District – Aurangabad)
Presenting residing at N9H61/1, Hudco,)
Shree Krushana Nagar, Aurangabad 431 001)

...Applicant

Versus

1. The State of Maharashtra.)
Through its Secretary,)
Home Development)
Mantralaya, Mumbai 32)
2. The Superintendent of Police,)
Aurangabad, District Aurangabad.)
3. The Inspector General of Police,)
Aurangabad Range, Aurangabad.)

)...Respondents

Smt. Amruta Paranjape, Advocate for the Applicant.

Shri V.R. Bhumkar, Presenting Officer for Respondents.

CORAM : SHRI B.P. PATIL (MEMBER-J)

CLOSED ON : 29.06.2018

PRONOUNCED ON : 17.07.2018

J U D G M E N T

1. The Applicant has challenged the order dated 28.06.2017 issued by Respondent No.2 transferring him from Anti Terrorist Cell, Aurangabad to Gangapur Police Station, District Aurangabad by cancelling his earlier transfer by filing the present Original Application.

2. The Applicant joined the police force on 17.01.2009. He was posted at Police Headquarters Aurangabad till the year 2014. On 31.01.2015, he was promoted as Naik Police Constable and posted at police station Gangapur. On 12.07.2016, he was transferred from police station Gangapur to Police Head Quarters, Aurangabad. On 31.12.2016, he was again transferred from police Head Quarters to Anti Terrorist Cell, Aurangabad on his request.

3. Accordingly, he was relieved from his earlier posting on 28.04.2017. He resumed his new posting in Anti Terrorist Cell. On 28.06.2017, Respondent No.2 cancelled the earlier transfer order dated 31.12.2016 by which applicant has been transferred from Gangapur Police Station and again he was reposted there.

4. It is contention of the Applicant that impugned transfer order is issued within two months from the date of his joining in Anti terrorist cell, Aurangabad. It is a mid-term transfer. It is his contention that no Police Establishment Board (P.E.B.) at District Level as provided under Section 22J-2 of the Maharashtra Police Act has been constituted while making his transfer. No meeting of the Police Establishment Board (P.E.B.) has been called for and any resolution had been passed regarding his transfer. It is his

contention that Respondent No.2 has issued the impugned order in his personal capacity and not as the Chairman of the Police Establishment Board (P.E.B.) at District Level. The impugned order is in contravention of Section 22N(1)(b) of the Maharashtra Police Act without recording reasons and therefore it is illegal.

5. It is his further contention that his service record is clean and satisfactory and not a single complaint and default record is made against him. His performance is exceptionally well when he was serving in Anti Terrorist Cell Aurangabad. He received certificate of merit regarding his work in Anti Terrorist Cell. It is averred by the Applicant that Respondent No.2 has either cancelled or reversed utmost 70% and 80% of transfer order issued by her Predecessor in office. The said transfer orders have been issued without recording reasons with a view to take vengeance against her Predecessor in office by victimizing Police Personnels at Constabulary level. It is contention of the Applicant that his family members are residing at Aurangabad and the distance between Gangapur and Aurangabad is about 40 to 45 kms and therefore it is not possible for him to travel in between Aurangabad and Gangapur on daily basis. Therefore earlier he requested Respondent No.2 to make his transfer to Aurangabad. Considering his difficulties he was transferred to Aurangabad by previous transfer order. On receiving impugned transfer order he made representation to the Respondent No.2 with a request to retain him in Anti Terrorist Cell. It is his further contention that impugned order is against provisions of the Maharashtra Police Act and therefore he prayed to quash the impugned order and to repost him at his earlier posting by allowing the Original Application.

6. Respondent No.1 to 3 resisted the application by filing their affidavit-in-reply. It is their contention that the impugned order has been issued as per the provisions of Maharashtra Police Act and the P.E.B. duly established as per the Section 22J-1 of the Maharashtra Police Act had decided to transfer the applicant. There is not illegality in impugned order. It is their contention that as per the provisions of Section 22(1)(b) of Maharashtra Police Act normal tenure of Police Constable is of 5 years at one place of posting, but the applicant has been transferred to Aurangabad from Gangapur by mid-term/mid-tenure transfer order dated 31.12.2016 without following the provisions of Maharashtra Police Act. The said transfer order was passed in contravention of provisions of Maharashtra Police Act and no meeting of P.E.B. was conducted before issuing the said transfer order and therefore Respondent No.2 had cancelled the said irregular order and posted applicant at Gangapur Police Station by issuing the impugned order dated 28.06.2017. It is their further contention that the Applicant had not completed his normal tenure of posting at Gangapur and therefore his previous transfer order was against the provisions of Maharashtra Police Act. It is their contention that Police Personnels are subject to the transfers all over Maharashtra as per the appointment order dated 17.01.2009 of the Applicant. Therefore the Applicant cannot claim his transfer / posting at Aurangabad on the ground of his family difficulties. It is their contention that there is no illegality in the impugned order and therefore they prayed to reject the O.A.

7. I have heard Smt. Amruta Paranjape, the learned Advocate for the Applicant and Shri V.R. Bhumkar, the learned Presenting Officer for the Respondents. I have perused the documents on record produced by both the parties.

8. Admittedly the applicant joined the Police force on 17.01.2009 as Police Constable and posted at Police Headquarters at Aurangabad. On 31.01.2015, he was promoted as Naik Police constable and posted at Gangapur Police station. He joined his new posting accordingly. On 12.07.2016, he was transferred from police station Gangapur to Police Headquarters, Aurangabad. On 31.12.2016 he was again transferred from Police Headquarters to Anti Terrorist Cell and since then he was working their till impugned order. Admittedly the earlier order transferring applicant from Gangapur to Police headquarters, Aurangabad has dated 12.07.2016 and another order dated 31.12.2016 transferring him to Anti Terrorist Cell had been issued by the Predecessor of the Respondent No.2. Admittedly by the impugned order dated 28.06.2017 Respondent No.2 cancelled the earlier transfer order of the Applicant dated 31.12.2016 and reposted him at Gangapur police station.

9. Learned Advocate for the Applicant has submitted that the impugned order dated 28.06.2017 (page no.11) has been issued by Respondent No.2 in her capacity as Superintendent of Police and by the said order the applicant has been transferred on administrative ground and posted at Gangapur by cancelling his earlier transfer order. She has submitted that no exceptional reasons have been recorded while issuing the impugned order by Respondent No.2. Not only this, but there is no reference regarding decision of the P.E.B. at District Level regarding the transfer of the applicant from Anti Terrorist Cell to police station at Gangapur.

10. She has further argued that on plain reading of the impugned order it reveals that no Police Establishment Board has been established as required under Section 22J-1 of the Maharashtra Police Act and without the decision of the Police Establishment Board the impugned transfer order has been issued by the Respondent No.2 without following the provisions of Maharashtra Police Act and therefore it is illegal.

11. Learned Advocate for the Applicant has further submitted that Applicant has been transferred to Police Head Quarters Aurangabad by order dated 12.01.2016 and thereafter he has been transferred to Anti Terrorists Cell Aurangabad by order dated 31.12.2016. He has not completed his normal tenure at the present place of posting i.e. at Aurangabad. Therefore, impugned order is a mid-term transfer order and the said impugned order has been issued in contravention of the provisions of Section 22N(1) of the Maharashtra Police Act and therefore it is illegal and it requires to be quashed by allowing the O.A.

12. Learned Advocate for the Applicant has further submitted that the impugned order has been issued by Respondent No.2 to harass Police Personnel at the Constabulary level with a view to take vengeance against her Predecessor. The Applicant was victimized and therefore the impugned order requires to be quashed. In these circumstances she is prayed to quash the impugned order by allowing the Original Application.

13. Learned P.O. for the Respondents has submitted that the Applicant has been transferred to Police headquarters at Aurangabad by the order dated 12.07.2016 and thereafter she has been posted at Anti Terrorist Cell, Aurangabad by the order dated 31.12.2016. He has further submitted that the Applicant was not due for transfer when he has been transferred to Police Headquarters, Aurangabad from Gangapur police station as he had not completed his normal tenure of the posting as provided under Section 22N(b) of Maharashtra Police Act. His earlier transfer order was issued in contravention of provisions of Maharashtra Police Act without holding the meeting of Police Establishment Board. The Respondent No.2 noticed the said irregularity in the transfer order of the applicant and therefore Respondent No.2 has cancelled the earlier irregular transfer order of the Applicant and reposted the applicant at his previous place i.e. at Gangapur police station. It is his further submission that the impugned transfer order dated 28.06.2017 is in accordance with the provisions of the provisions of Maharashtra Police Act and therefore there is no irregularity and illegality in it. Therefore he supported the impugned order.

14. He has further submitted that the meeting of the Police Establishment Board at District Level has been held on 27.06.2017 and issue regarding transfer of the applicant has been considered in the meeting and after considering the irregularity in the earlier transfer order of the applicant and on account of public exigencies the Police Establishment Board decided to cancel the earlier transfer order of the applicant and reposted him at Gangapur. Accordingly, Respondent No.2 issued impugned order dated 28.06.2017. He has submitted the impugned order is as per the provisions of Maharashtra Police Act and therefore he justified the impugned order and prayed to reject the O.A..

15. On perusal of the record it reveals that the applicant has been transferred from Gangapur police station to Police Headquarters by order dated 12.07.2016 and thereafter again he has been transferred to Anti Terrorist Cell by the order dated 31.12.2016. Accordingly the applicant joined the said posting. The said order has been passed by Predecessor in the office of Respondent No.2. By the impugned order dated 28.07.2017 the earlier order of transfer of the Applicant has been cancelled and he has been reposted at Gangapur on administrative grounds. The impugned order is material and I reproduce the same (page 11).

“जा.क्र. प्रलि/आस्था-१/वि.ब.आ.रद्द/२०१७/५२८४ औरंगाबाद ग्रा. दिनांक २४/०६/२०१७

संदर्भ :- या कार्यालयाचे पत्र क्रं. आस्था-१/वि.कर्म/नेमणूक/२०१६ औरंगाबाद ग्रा.दि.
३१/१२/२०१६.

विषय :- एटीसी येथील विनंती बदलीचे आदेश रद्द करण्यात येत असले बाबत.

आदेश:-

उपरोक्त विषयान्वये कळविण्यांत येते की, संदर्भीय पत्रान्वये खालील पोलीस कर्मचारी यांची दहशतवाद विरोधी पथक (एटीसी) येथे त्यांच्या विनंती वरून बदली करण्यात आली होती. सन २०१६ मध्ये प्रशासकीय बदली झाल्यानंतर विनंती बदल्या करण्यात आल्या होत्या. सन २०१७ च्या सर्वसाधारण बदल्याच्या आगोदर वरील संदर्भीय पत्रान्वये विनंती बदली करण्यात आलेली आहे. परंतु सदर कर्मचारी यांची प्रशासकीय कारणास्तव त्यांचा नावांसमोर दर्शविल्याप्रमाणे तात्काळ प्रभावाने बदली करण्यात येत आहे.

अ. क्र.	हुद्या, ब.क्र.व नाव	पुर्वीची नेमणूक ठिकाण	प्रशासकीय बदली ठिकाण	शेरा
१	पोना/६८ जी.टी. साबळे	दहशतवाद विरोधी पथक (एटीसी)	पोस्टे गंगापूर	एटीसी येथे झालेली बदली रद्द करण्यात येत आहे.

सदर पोलीस कर्मचारी यांचे माहे ७/२०१७ चे वेतन नुतन बदलीचे ठिकाणी हजर झाल्यानंतरच प्रभारी अधिकारी यांनी आकारावे.

(डॉ. आरती सिंह)
पोलीस अधिक्षक, औरंगाबाद ग्रा.”

16. On plain reading of the said order it reveals that there is no reference in the impugned order regarding the decision of Police Establishment Board to cancel the earlier transfer order of the applicant and reposting him at Gangapur. It has been issued by Respondent No.2 in the capacity of Superintendent of Police, Aurangabad (Rural). During the course of hearing Respondents have filed short affidavit and submitted that no separate order of constitution of Police Establishment Board has been issued. But they reiterated that the transfer of the applicant has been made by the Police Establishment Board and it has been mentioned in the minutes of the meeting dated 27.06.2017. On perusal of the minutes of the meeting dated 27.06.2017 it reveals that it has been specifically mentioned that the Police Establishment Board has been constituted as per the provisions of Section 22J-1 of the Maharashtra Police Act and meeting of the Board has been called on that day. But no such order establishing the board comprising of Respondent No.2 as the Chairman and two of her officials as Members had been placed on record by the Respondents. On perusal of the minutes of the meeting it reveals that the decision to cancel the earlier transfer of applicant has taken by the Respondent No.2 on the ground that he had made the transfer of the applicant without establishing the Police Establishment Board as per the provisions of Section 22J-1 of Maharashtra Police Act.

17. In fact the earlier order dated 12.07.2016 by which the applicant has been transferred from Gangapur to Police headquarters and again to Anti Terrorist Cell by order dated 31.12.2016 had already been executed. It is also material to note here that as per the minutes of the meeting dated 27.06.2017 the earlier transfer order of the applicant has been cancelled on the ground that no Police Establishment Board has been established while issuing the said orders. But thereafter also Respondent

No.1 had not issued any order to constitute Police Establishment Board at District Level for transfer of Police Personnel in view of provision of Section 22J-1 of Maharashtra Police Act. In the absence of said order it creates doubt regarding constitution of the Police Establishment Board and the so called meeting of the said board held on 27.06.2017. Had it been a fact that P.E.B. had been established by Respondent No.2 as per provisions of Section 22J-1 of Maharashtra Police Act and the meeting had been called and the decision to cancel the earlier order of the applicant had been taken in the meeting of P.E.B., definitely the Respondents then would have filed the order regarding constitution of the P.E.B. and the Respondent would have mentioned the said fact i.e. : regarding the decision of the P.E.B. in the impugned order. But in the impugned order dated 28.07.2017 there is no mention regarding the decision of the P.E.B. alleged to be taken on 27.06.2017 regarding the transfer of the applicant and reposting him at Police Station Gangapur. Therefore I do not find substance in the submissions advanced on behalf of the Respondents in that regard.

18. The Applicant has been transferred to Aurangabad in the month of July 2016. He has not completed his normal tenure of posting in that post. Therefore transfer of the applicant made by impugned order is a mid-term transfer. For making mid-term transfer the competent transferring authority has to mention the special reasons. In view of the provisions of Section 22N(2) of Maharashtra Police Act competent transferring authority i.e. P.E.B. at District Level shall make mid-term transfers in exceptional cases, in public interest and on account of administrative exigencies but no such case has been made out by Respondent while making transfer of the applicant before completion of his tenure of posting. Not only this but no reasons

have been mentioned in the impugned order. Therefore in my view the impugned transfer order is not in accordance with the provisions of the Section 22N of the Maharashtra Police Act. Therefore it requires to be quashed and set aside.

19. Learned Advocate for the Applicant has submitted that the Respondent No.2 has inductively cancelled the transfer orders issued by her Predecessor in the office in many cases. In some of the cases this Tribunal has quashed the order issued by the Respondent No.2 in that regard. She has further submitted that the Applicant is victimized by Respondent No.2 as she has issued order with a view to take vengeance against her Predecessor in office. Therefore, she prayed to quash the impugned order.

20. In support of her submissions she has placed reliance on the following judgments of this Tribunal :-

- 1 In case of O.A.No.464 of 2017, Shri Rajendra D. Kirtikar versus State of Maharashtra, dated 21.03.2018.
- 2 In case of O.A.No.914 of 2017, Shri Dhiraj Dharmraj Jadhav versus State of Maharashtra, dated 12.04.2018.
- 3 In case of O.A.No.463 of 2017, Shri Raosaheb Babaji Awhad versus State of Maharashtra, dated 21.03.2018.

21. I have gone through the said decision. In the said decision the transfer orders issued by the Respondent No.2 had been cancelled by this Tribunal as the Respondent has not followed the provisions of Section 22J-1 and Section 22N of the Maharashtra Police Act while making transfers of the Police Personnels who were applicant in those matters. In this case also the Respondent No.2 made transfer of the applicant on the ground that her Predecessor in office issued transfer order of Police Personnel including the Applicant without establishing Police Establishment

Board in view of provisions of Section 22J-1 of the Maharashtra Police Act. But without rectifying the said irregularity she issued the impugned order. She has issued the impugned order without establishing the P.E.B. Therefore the impugned order requires to be set aside.

22. In view of the above such discussion, it is crystal clear that the Respondent No.2 has issued the impugned order without following the provisions of Section 22N. No reasons has been recorded while cancelling the earlier order of transfer of the applicant and reposted at Gangapur and therefore the impugned order is not legal. Therefore, it requires to be quashed and set aside by allowing the O.A.

23. In view of the discussion of the foregoing paragraphs, O.A. is allowed and impugned order dated 28.06.2017 cancelling the earlier order of transfer of the applicant and reposting the applicant is quashed and set aside. The Respondent No.2 is directed to repost the applicant at his earlier posting at Aurangabad immediately. No order as to costs.

Sd/-
(B.P. Patil)
Member-J

prk