IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO. 841 OF 2015

DISTRICT :

1] Shri Sainath Laxman Sanap,)
Aged 28 Yrs, R/at Shaila Apt.)
C-412, 4th Floor, Ramchandra)
Nagar, Tisgaon-421 306.)

2] Shri Arvind Dnyanoba Dhabde,)
Aged 33 Yrs, R/at Room No.)
305, Building No.26,)
Mahatma Jyotiba Phule Society)
Maharashtra Nagar,)
Mankhurd [E], Mumbai – 88.)

3] Shri Yogesh Rama Jadhav,)
Aged 29 Yrs, R/at B-203,)
Govind Dham, Near Saket)
College, Chinchpada, Kalyan,)
Dist. Thane.)

4] Shir Ganesh Ashok Raut,)
Aged 29 Yrs, R/at Ganesh)
Gawde Road, Rohidas Nagar,)
Room No.3, Building No.3B,)
Mulund [W], Mumbai.)

5] Shri Sachin Vikas Dalvi,)
Aged 30 Yrs, R/at B/60,)
2nd Floor, Mata Ramabai)
Ambedkar Marg, Police Line,)
Palton Road, Mumbai.)

6] Shri Hemant Sopanrao Yerkhade)
Aged 31 Yrs, R/at Room No.201)
First Flover, E-Wing,)
Pandu Hari Rai Residency)
Enclave, Kalyan [E],)

7] Shri Kishor Janu Sasane,)
Aged 33 Yrs, Room No.309,)
Building No.30, Mahatma)
Jyotiba Phule Society,)
Maharashtra Nagar,)
Mankhurd [E], Mumbai – 88.)

8] Shri Pandharinath Anna)
Sangale, Aged 29 Yrs,)
R/at C/203, Ekveera Aai)
Darshan Apartment,)
Near Samarth Nagar,)
Adivali Dhokli Road,)
Tal. Ambarnath, Dist. Thane.)

9] Shri Javed Rafik Pathan,)
Aged 28 Yrs, R/at Hajuri Darga,)
Nuri Road, Sherkhan Chawl,)
Wagale Estate Thane [W].)

10] Shri Sachin Shashikant Patil,)
Aged 27 Yrs, R/at A/P. Shevage)
Bk, Tal. Parola, Dist. Jalgaon.)
All are working as Police)
Constable in Motor Transport)
Department, Having Office at)
Nagpada, Mumbai.)...**Applicants**

VERSUS

1] The Deputy Commissioner of Police, Motor Transport Department, Having Office at Nagpada, Mumbai – 8.)

2] The Commissioner of Police, Mumbai, Having Office at Old Council Hall, Shahid Bhagatsinh Marg, Mumbai – 400 039.)

3] The Additional Commissioner of Police, Mumbai, Armed Police Force (L.A.), Having Office at Naigaon, Mumbai -14.)

4] The State of Maharashtra, Through Principal Secretary, Home Department, Having Office at Mantralaya, Mumbai – 400 032.)....**Respondents**

Shri A.V. Bandiwadekar, learned Advocate for the Applicant.

Shri N.K. Rajpurohit, learned Chief Presenting Officer for the Respondents.

CORAM : Shri J.D. Kulkarni, Member (J)

DATE : 29.01.2016.

JUDGEMENT

1. Heard Shri A.V. Bandiwadekar, the learned Counsel for the Applicant and Shri N.K. Rajpurohit, the learned Chief Presenting Officer for the Respondents.

2. The Applicants in this O.A. have requested for setting aside impugned order dated 30.7.2015 issued by the Respondent No.1 i.e. The Deputy Commissioner of Police, Motor Transport Department. The Respondent No.1 has declined the Applicants request for being sent back immediately to Armed Police Force (from where they were sent on deputation to Motor Transport Department as Driver Police Constable).

3. According to the Applicants they were appointed as Police Constable in view of the various recruitment order issued by the Respondent No.1. However, immediately appointment orders were issued and the Applicants were sent on deputation vide order dated 27.6.2012 on the post of Police Constable – Driver. Thus, since 27.06.2012 the Applicants have been on deputation.

4. According to the Applicants they have worked in Armed Police Force for about two years and thereafter they were sent on deputation to Motor Transport Department as Driver. It is stated that 20 colleagues of the Applicants who were deputed vide order dated 27.6.2012 to the Motor Transport Department came to be relieved from Motor

Transport Department and sent back for being posted to their original place of posting namely Armed Police Force. As many as 67 colleagues of the Applicants who were deputed to Motor Transport Department as Driver did not join.

5. The Applicants requested from time to time to cancel their deputation and to post them as Police Constable. Along with Applicants many Constables also requested for cancellation of deputation. Some of the request were considered. The Applicants have completed period of more than three years as Driver Police Constables and therefore they have filed this O.A.

6. The Respondent No.2 i.e. The Commissioner of Police, Mumbai has filed affidavit-in-reply. It is submitted that the Applicants are posted to Motor Transport Section on 1.7.2012 to perform the duty for Driver on Police Vehicle as per Maharashtra Police (Amendment) Act, 2015. They have not completed deputation of 5 years as per Section 22N (1) (b) and therefore the Applicants cannot claim for the repatriation to Armed Police Force as of right.

7. It is stated that there is a shortage of Drivers and about 350 posts of Drivers are vacant and therefore for administrative convenience number of Police Personnel in the cadre of Police Constables – Drives have been deputed and therefore the deputation is legal and proper.

8. The Applicants have filed rejoinder-affidavit and submitted that there is fine distinction between transfer and deputation. The Applicants are not transferred but are sent on deputation. It is stated that the Respondents are obliged to furnish strong and convincing reasons for not cancelling the deputation of the Applicants.

9. Heard Shri A.V. Bandiwadekar, the learned Counsel for the Applicant and Shri N.K. Rajpurohit, the learned Chief Presenting Officer for the Respondents. I have perused the affidavit-in-reply and the affidavit-in-rejoinder and various documents placed on record by the respective sides.

10. The learned Counsel for the Applicants submits that the order of deputation itself illegal since the Applicants were posted as Police Constable and there was no reason for they being deputed to the post of Police Constables -Drivers.

11. The learned Counsel for the Applicants placed reliance on one judgement delivered in O.A.No.692 of 2015 in the case of Sarjerao Baburao Gaikwad & Ors. Vs- The State of Maharashtra & Ors. dated 10.07.201. In the said judgement, similar issue was involved as to whether the Police Constable can be posted as Driver. It is submitted that in view of the judgement delivered in the said O.A., impugned order of deputation of the Applicants is illegal and infact the deputation should have been cancelled immediately.

12. The impugned office order whereby the representation of the Applicants and like persons have been rejected is placed on record at Exhibit 'A' page no.21 of the Paper Book. The only question arises whether the said communication dated 30.7.2015 is legal or not?

13. I have perused the judgement in O.A.No.692 of 2015. It seems that the Applicants in the said O.A. were Police Constable and were appointed so. The Tribunal however held that the Police Constable can be posted as Driver, but his tenure will be restricted to three years from the date of joining, except in those cases where they are willing to be continued for another three years. That has been considered in view of the fact that the tenure of class- 3 employee on one post is three years. However, now the said tenure has been extended to 5 years by way of amendment in the Maharashtra Police Act.

14. In the present case the Applicants have been appointed as Police Constables- Police Drivers and not as Police Constable only or exclusively. One of the order of appointment is placed on record at Exhibit 'C' at page no.24 to 26 of the paper book. It is in respect of Applicant Shri Sainath Laxman Sanap i.e. Applicant No.1. The subject of the said order reads as "(विषयः- मुंबई पोलीस भरती - २००९, पोलीस शिपाई/पोलीस शिपाई चालक पदावर नियुक्ती)" and the opening paragraph of the order reads as under:-

'' संदर्भाधीन पत्रान्वये कळविल्यानुसार आपली मुंबई पोलीस भरती २००९ प्रक्रियेतंर्गत मुंबई पोलीस दलात निवड झाली असून आपली खालील नमूद अटी व शर्तीच्या अधीन राहून दि.२५. ०८.२०१० पासून पोलीस शिपाई/पोलीस शिपाई चालक पदावर नियुक्ती करण्यात येत आहे.''

(quoted from page no.24 of the O.A.)

15. In condition no.19 and 20 of the said order it has been stated as under:-

''१९. मुंबई पोलीस दलाच्या आवश्यकतेनुसार व आपण दिलेल्या हमीपत्रानुसार आपणास सेवा कालावधीत पोलीस चालक (DRIVER) कर्तव्य सुद्धा पार पाडणे बंधनकारक राहील. यासाठी आपणास चालक परवाना (Driving Licence) मिळवणे आवश्यक असेल.

२०. पोलीस शिपाई चालक या पदावर नेमणूक केलेल्या उमेदवारांना पोलीस चालक पदातील कर्तव्याव्यतिरिक्त पोलीस मुख्यालयातील अन्य पोलीस कर्तव्ये सुद्धा पार पाडावी लागतील.''

16. In view of the aforesaid conditions in the appointment order it will be clear that the Applicants are appointed as Police Constable- Police Driver and in view of the conditions no.19 and 20 it was obligatory upon them to work as Police –Driver and to perform duties as Police-Driver.

17. In view of the aforesaid condition of servie some of the Police Constables- Police Drivers have been deputed to serve as driver in the Motor Transport Department vide order dated 17.06.2012 and therefore the impugned order can not be said to be illegible or without jurisdiction.

18. Learned Counsel for the Applicant has invited my attention to one office order which has been passed on 30.7.20215 by the Motor Transport Department, Nagpada,

Mumbai. As per said order it seems that almost 700 Police Constables are undertaking training and after completion of their training the request of the Police Constables- Drivers who desire to be repatriated as Police Constables will be considered and the Police Constable -Drivers of the batch of 2009 are being considered for repatriation in the Annual General Transfer 2016. The said order is at Page No.21 (Exh. 'A' of the paper book).

19. Learned Counsel for the Applicant admits that the Applicants will be satisfied if said directions are issued to the Respondents to consider their request for repatriation or transfer as Police Constable in the Annual General Transfer of 2016.

20. In view thereof, though there is no merit in the application, the application can be disposed of with following directions. Hence the order.

ORDER

(1) Application is partly allowed.

(2) The Respondents are directed to consider the request of the Applicants for being sent back to Armed Police Force (from where they were sent on deputation to Motor Transport Department) at the time of Annual General Transfer for the year 2016 symphatically without being influenced by any of

the observations in the order. No order as to costs.

Sd/-

(J.D. KULKARNI)
MEMBER (J)

Date : 29.01.2016
Place : Mumbai
Dictation taken by : SBA

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