

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 842 OF 2015

DISTRICT : THANE

Shri Brahmadeo Sakharam Shelke,)
Working as Police Sub-Inspector, in)
Force-I Commando, Kalina Police)
Head Quarters, Santacruz [E],)
Mumbai 400 098.)
R/o: Ganaraya Tower,)
Near Umayya Complex, Titwala, Kalyan,)
Dist-Thane.)...**Applicant**

Versus

1. The Special Inspector General)
of Police, Force-I, [M.S], Mumbai.)
having office at Police Training)
Centre, Kole-Kalyan, Santacruz [E],)
Mumbai 400 098.)
2. The Director General and Inspector)
General of Police, [M.S])
Having office at Old Council Hall,)
S.B Marg, Mumbai 400 039.)

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3. The State of Maharashtra,)
Through Principal Secretary,)
Home Department, Mantralaya,)
Mumbaj 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 Rajiv Agarwal (Vice-Chairman)

DATE : 25.01.2016

ORDER

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

2. This Original Application has been filed by the Applicant challenging the order dated 22.6.2015 passed by the Respondent no. 2 posting him as Assistant Police Inspector to Nagpur Range from Force One, Mumbai.

3. Learned Counsel for the Applicant argued that the Applicant was working in the Special Anti Terrorist Force called Force-One, w.e.f 27.12.2009. Police Officers

working in Force-One were extended certain incentives due to difficult nature of the work. One such incentive was posting of choice on successful completion of 5 years tenure in Force-One. The Applicant successfully completed his tenure of 5 years in Force-One and he requested for a posting in Navi Mumbai or Thane Police Commissionerate. The Applicant was accordingly posted by order dated 11.6.2015 to Thane Police Commissionerate. Before the Applicant could join at Thane, he was promoted to the post of Assistant Police Inspector and was posted to Nagpur Range by order dated 22.6.2015. This posting has caused serious hardships to the Applicant. Learned Counsel for the Applicant argued that this Tribunal by order dated 19.10.2015 directed the Respondent no. 2 to reconsider the representation of the Applicant as recommended by Spl. I.G.P, Force One by his letter dated 25.6.2015. However, the Respondent no. 2 has rejected the representation without assigning any reasons on 2.11.2015. Learned Counsel for the Applicant argued that the case of the Applicant was required to be placed before the Police Establishment Board no. 2. However, the order dated 2.11.2015 is passed by the Respondent no. 2 without reference to the Police Establishment Board no. 2 and it is, therefore, bad in law. Learned Counsel for the Applicant contended that the impugned order dated 22.6.2015 was approved by the Police Establishment Board no. 2, which was not constituted as

per Section 22-E of the Maharashtra Police Act, as there was no member from Backward Class appointed by the State Government was present and the Respondent no. 2 has not entered into any correspondence with the State Government for nominating a backward class Officer on the Police Establishment Board no. 2. The impugned order dated 22.6.2015 is, therefore, bad in law.

4. Learned Chief Presenting Officer (C.P.O) argued on behalf of the Respondents that there is no policy that a Police Officer working in Force-One be given a posting of his choice on his successful completion of tenure of five years. The State Government has not issued any instructions in this regard by issuing Circular or Resolution. Learned Chief Presenting Officer stated that the order dated 22.6.2015 is not a transfer order. In fact, the Applicant is promoted from the post of Police Sub-Inspector (PSI) to the post of Assistant Police Inspector (API) and he has been given a posting in Nagpur Range on promotion. Learned Chief Presenting Officer contended that the Respondent no. 2 decided not to put up the representation of the Applicant for the posting of his choice before the Police Establishment Board as there was no such policy in existence as alleged by the Applicant. Learned C.P.O stated that the posting of the Applicant on promotion as A.P.I was approved by the Police Establishment Board no. 2 in its meeting held on 20.6.2015. This Board has six members, five of which

were present. An officer of the rank of Additional Director General of Police from backward class was also invited in the meeting. However, that officer was not appointed by the State Government. Learned Chief Presenting Officer contended that even if the presence of that Member is ignored, the Police Establishment Board no. 2 cannot be said to be improperly constituted. Absence of one or two members will not vitiate the proceedings of the Police Establishment Board. Learned C.P.O cited judgment of this Tribunal dated 28.11.2013 in O.A no 556 of 2013 in support of this contention. Learned C.P.O stated that the Applicant is alleging that some other officers were given posting of their choice after they completed their term in Force-One. This is not substantiated by any material on record.

5. The Applicant has challenged his posting by order dated 22.6.2015 to Nagpur range on three grounds, viz:

- (i) The Applicant was entitled to be given posting of his choice on completion of his tenure of 5 years in Force-one.
- (ii) The Applicant has been discriminated in this regard as some other officers have been given posting of their choice on completion of their tenures in Force

one. Shri Rajesh Kumar Jagannath Puranik was given posting of his choice in Pune.

- (iii) The Police Establishment Board no. 2 was not constituted properly as per Section 22E of the Maharashtra Police Act. This Tribunal (Aurangabad Bench) by judgment dated 16.10.2015 in R.A no 6/2015 in O.A no 177/2015 has held that there should be consent by all members of the Establishment Board. This was not the case as one member of the Board was absent and there was no member from Backward Class appointed by the State Government.

It is true that by order dated 19.10.2015, this Tribunal had directed the Respondent no. 2 to take a decision on the recommendation of the Special Inspector General of Police, Force-One dated 25.6.2015 in respect of the posting of the Applicant. Said letter dated 25.6.2015 is at Exhibit 'G' (page 39 of the Paper Book). It is mentioned that Force One is a specialized agency and officers who complete their tenure successfully in Force One, their request for choice of posting is considered positively. The Respondent no. 2, in the affidavit in reply filed on 22.12.2015 has stated in para 3.2 that there is no such policy. In fact the letter dated 25.6.2015 does not mention about any such policy but only state that choice of posting indicated by Officers who have successfully

completed their tenures in Force One is considered positively. As there is no such policy of the State Government in Force, this Tribunal can give no directions to the Respondents to give a posting of his choice to the Applicant.

6. The Applicant claims that some other officers were given posting of their choice on their transfer from Force One. He has placed a copy of order dated 29.9.2015 in respect of one Shri Rajesh Kumar Jagannath Puranik, who was transferred to Ratnagiri by order dated 22.6.2015 but who has since been given a posting to Pune. It is seen that Shri Puranik was promoted to the post of Police Inspector and posted to Ratnagiri from Force-One by order dated 22.6.2015. Later he was posted to Pune. This order dated 29.9.2015 does not mention that Shri Puranik's posting was changed as per his request. Even if, for the sake of argument, it is accepted that Shri Puranik's posting to Pune was as per his request, that fact alone will not prove that there was a policy of giving posting of choice to officers on transfer from Force One, after successful completion of their tenures. There is no material on record to substantiate claim of the Applicant that he was put to discrimination in any manner.

7. The question of validity of the meeting of the Police Establishment Board no. 2 (P.E.B no. 2) on

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20.6.2015 is now examined. As per Section 22E of the Maharashtra Police Act, P.E.B no. 2 has six members. However, proviso to sub section (2) of Section 22E provides that if none of the members is from the Backward class, then the State Government shall appoint an additional member of the rank of the Additional Director General and Inspector General of Police belonging to such class. In the affidavit in reply dated 22.12.2015, the Respondent no. 2 has admitted that all six members of the Board were from open category, therefore, one member of the rank of Spl. Inspector General of Police from Backward Class was included in the Police Establishment Board no. 2 as seventh member. From the letter dated 7.1.2016 from the Respondent no. 2 addressed to learned C.P.O (a copy of which is placed on record by the learned C.P.O), it is clear that this seventh member was not appointed by the State Government as required by section 22E ibid. Learned Counsel for the Applicant has claimed that one member of the Board was absent in the meeting on 20.6.2015 and there was no member belonging to Backward class. The meeting of the Police Establishment Board no. 2 held on 20.6.2015 was, therefore, not as per law and the impugned order dated 22.6.2015 must be held to be bad in law. He relied on judgment of this Tribunal (Aurangabad Bench) in R.A no 6/2015 in O.A 177/2015. It is held that:-

“17. Even for the arguments sake it is accepted that in the present case, the order was passed by Police Establishment Board, it is necessary to see as to whether the said order has been passed and consented by all Members of such Establishment Board.”

The Applicant claims that this order will mean that all members of the Board must be present for the meeting and consent to a proposal for it to be held valid. This proposition is not acceptable. The above observation, at the most, can mean that all members of the Board, who are present in a meeting, must consent to a proposal for it to be valid. This view is strengthened by the decision of this Tribunal dated 28.11.2013 in O.A no 556/2013. This Tribunal has examined this issued in great detail. The judgment has quoted from the judgment of this Tribunal in an earlier O.A no 48/2012, where it was held that:

“The Applicant has relied on the judgment of the Hon. Supreme Court in State of Andhra Pradesh & another Vs. Dr Mohanjit Singh & another 1998 (Suppl) SCC 562. A careful perusal of the judgment show that the ratio decidendi laid down is that where the presence of a particular member of the Committee is regarded as essential for completing the quoram, the absence of that member would render its decision invalid. The Government

Resolution dated 25th July, 2008 does not provide for any quorum for meeting of the Board aforesaid and it also does not make attendance of any member mandatory for the meeting to be valid.”

This decision was in the context of G.R dated 25th July, 2008 establishing Police Establishment Board. Now such Boards are established under the provisions of the Maharashtra Police Act. Section 22E ibid, which provides for establishment of Police Establishment Board no. 2, also does not provide for presence of a particular member to be necessary for completing the quorum. Similarly, the attendance of no member has been made mandatory for the meeting of Police Establishment Board to be valid. No quorum is provided in the aforementioned section. Absence of one or two members of the Board will, therefore, not invalidate its proceedings. This Tribunal has not so decided in the judgment of Aurangabad Bench in R.A no 6/2015 in O.A no 177/2015. On the contrary, there are at least two decisions of this Tribunal in O.A nos 48/2012 and 556/2013, where it has been categorically held that absence of one member will not invalidate its proceedings. The same will hold true if 2 out of 7 members were absent. More than two-third members were present in the meeting dated 20.6.2015 and in absence of any quorum being provided, this presence was more than adequate for the proceedings of the Board to be valid.

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8. The Applicant has not been able to make out any case for interference by this Tribunal in the posting order dated 22.6.2015 to Nagpur Range. As a result, this Original Application is dismissed with no order as to costs.

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai

Date : 25.01.2016

Dictation taken by : A.K. Nair.

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