

BEFORE THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH AT AURANGABAD

ORIGINAL APPLICATION NO.883 OF 2017

(Subject : Transfer)

DISTRICT : AURANGABAD

Datta Raghunath Munde)
Presently posted at Devgaon Rangari Police)
Station, Taluka Kannad, District Aurangabad.)
R/o. Sanjay Provisions, Near Ganpati Mandir,)
Jai Bhavani Nagar, N-4 CIDCO,)
Taluka and District Aurangabad.)

...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

Shri Joslyn A. Menezes, Advocate for the Applicant.

Shri S.K. Shirse, 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. Applicant has challenged the impugned order dated 15.05.2017 issued by Respondent No.2 by which his earlier transfer order has been cancelled and he has been reposted on the place of his earlier posting, by filing the present O.A.

2. Applicant joined the Police Service on 18.07.2006 as Police Constable and posted at Police Headquarters at Aurangabad on 21.01.2008. He was transferred to Yawatmal city Police Station. On 01.11.2009 he was transferred to Police Headquarters. Thereafter he was again transferred to Pachod Police Station on 18.07.2010. On 24.08.2011 he was promoted as Police Naik. On 06.05.2015 he was transferred from Pachod Police Station to Devgaon Rangari police station. When he was serving at Devgaon Rangari police station he made request for his transfer in Traffic Police Department, Aurangabad on account of his personal difficulties. Accordingly he has been transferred to Aurangabad, by order dated 27.03.2017 to Traffic Police Department, Aurangabad. He joined the Traffic Police Department on 29.04.2017. On 05.05.2017 he proceeded on leave for one month by obtaining prior sanction from higher authorities. When he was on leave he was served with the impugned order dated 15.05.2017 by which his earlier transfer order dated 27.03.2017 has been revoked and he has been reposted at Devgaon Rangari police station.

3. It is his contentions that he has not completed his tenure of posting at Traffic Police Department, Aurangabad and it is mid-term transfer. It is his contention that no special reasons has been recorded for making his transfer. Not only this the said transfer order is not made in exceptional case or in the

public interest or on account of administrative exigencies. The impugned order is in contravention of provision to Section 22N (2)(e) of Maharashtra Police Act. It is his contentions that Respondent No.2 has cancelled earlier transfer orders of 70% to 80% Police Personnels which have been made by her Predecessor in office. It is his contention that the impugned order has been issued without establishing the Police Establishment Board and without the decision of the Board. Therefore, it is illegal. On these grounds he prayed to quash the impugned order by allowing the O.A.

4. Respondents No.1 to 4 resisted the application by filing their affidavit-in-reply. It is their contention that the previous transfer order of the applicant was in accordance with the provisions of Maharashtra Police Act and therefore the same has been cancelled by the Police Establishment Board and accordingly Respondent No.2 has issued the impugned order and reposted the applicant at Devgaon Rangari police station. It is their contention that earlier transfer of the applicant was mid term transfer and it was made before completion of his normal tenure of 5 years at the place of posting and it was issued without following the provisions of Maharashtra Police Act. It is their contention that P.E.B. took the decision in that regard and there is no irregularity in the impugned order. Therefore they prayed to reject the O.A.

5. I have heard Shri Joslyn A. Menezes, the learned Advocate for the Petitioner and Shri S.K. Shirse, the learned Presenting Officer for the Respondents. I have perused the documents placed on record by both the parties.

6. Admittedly the applicant joined the police force on 18.07.2006 as Police Constable and posted at Police Headquarters. Thereafter he served at various places in that cadre. On 24.08.2011 he was promoted as Police Naik. On 06.05.2015 he was retransferred from Pachod Police Station to Devgaon Rangari police station. Admittedly on 27.03.2017 he has been transferred from Devgaon Rangari police station to Traffic Police Department, Aurangabad and he assumed the duty at Traffic Police Department on 29.04.2017. Admittedly, by the impugned order dated 15.05.2017 his earlier transfer order dated 27.03.2017 has been revoked and he has been reposted at Devgaon Rangari police station. Admittedly he has not completed his normal tenure of 5 years at Traffic Police Department, Aurangabad. The impugned order is mid-term transfer order.

7. Learned Advocate for the Applicant has submitted that the applicant joined his posting in the Traffic Police Department, Aurangabad on 29.04.2017 and thereafter he proceeded on leave on 05.05.2017 for one month. When he was on leave the Respondent No.2 issued transfer order dated 15.05.2017 and cancelled his earlier transfer order and reposted him at Devgaon Rangari police station. He has submitted that since earlier transfer order dated 27.03.2017 has been executed no question of the revocation of said order arises. Learned Advocate for the Applicant has further submitted that the impugned order dated 15.05.2017 does not disclose the reasons or grounds on which earlier transfer order has been cancelled and the applicant has been reposted at Devgaon Rangari police station. He has further submitted that there is no mention regarding the constitution of Police Establishment Board and the decision taken by the board regarding transfer of the applicant in the impugned order.

Therefore it creates doubt regarding the contentions of the Respondents that Police Establishment Board has decided to cancel the transfer of the applicant to repost him at Devgaon Rangari police station.

8. Learned Advocate for the Applicant has further submitted that in view of the provisions of Section 22N-2 of Maharashtra Police Act the competent transfer authority can make transfer of the Police Personnel in exceptional cases, in public interest or on account of administrative exigencies. But no such ground has been mentioned in the transfer order and therefore impugned order is in violation of the provisions of Section 22N of the Maharashtra Police Act. Therefore she prayed to quash the impugned order by allowing the O.A.

9. Learned P.O. for the Respondents has submitted that Respondent No.2 noticed that earlier transfer orders of Police Personnel issued by her Predecessor were in contravention of the provisions of Maharashtra Police Act and no Police Establishment Board has been constituted before making such transfers and therefore the said matter has been placed before the P.E.B. at District Level. In the meeting of P.E.B. dated 12.05.2017 the issue was considered and after discussing the said issue the P.E.B. decided to cancel the earlier transfer order of the Police Personnel including the Applicant and reposted him at his earlier place of posting. Impugned order has been issued as per decision taken by the P.E.B. and it is in accordance with the provisions of Section 22N of the Maharashtra Police Act. There is no illegality in the order. Therefore he prayed to reject the O.A.

10. I have gone through the impugned order dated 15.05.2017 (page 14). No specific reasons for the transfer of the applicant and cancellation of his earlier transfer order has been mentioned in the transfer order issued by the Respondent No.2. The impugned transfer order is material and therefore I reproduce the same (page 14) :-

“जा.क्र. प्रलि/आस्था-१/वि.ब.आ.स्व/२०१७/३९८१ औरंगाबाद ग्रा. दिनांक १५/०५/२०१७

संदर्भ :- या कार्यालयाचे पत्र क्रं. आस्था-१/वि.कर्म/नेमणूक/२०१७/१२३३५
 दि.३१.१२.२०१६, समकमांक २५५४ दि.२७.३.२०१७, समकमांक २५५९
 दि.२७.३.२०१६, समकमांक २५५२ दि.२७.३.२०१७ समकमांक २५५८
 दि.२७.३.२०१७, समकमांक १२३३४, दि.३१.१२.२०१६, समकमांक १२३४४
 दि.३१.१२.२०१६, समकमांक १२३३०, दि.३१.१२.२०१६, समकमांक १२३३३
 दि.३१.१२.२०१६, समकमांक १२३४० दि.३१.१२.२०१६, समकमांक ३०९५
 दि.२०.४.२०१७, समकमांक ३१०० दि.२१.०४.२०१७, समकमांक १५५४
 दि.२१.२.२०१७, समकमांक ३२१८ दि.२५.४.२०१७, समकमांक २५६६
 दि.२७.३.२०१७, समकमांक ३०९३ दि.२०.४.२०१७, समकमांक ३१०२
 दि.२१.४.२०१७, समकमांक ३१२३ दि.२१.४.२०१७, समकमांक ३२५८
 दि.२६.४.२०१७.

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

आदेश:-

उपरोक्त विषयान्वये कळविण्यांत येते की, संदर्भीय पत्रान्वये खालील (१९) पोलीस कर्मचारी यांची वाहतुक शाखा येथे त्यांच्या विनंती वरून बदली करण्यात आली आहे. सन २०१६ मध्ये प्रशासकीय बदली झाल्यानंतर विनंती बदल्या करण्यात आल्या होत्या. परंतु सन २०१७ च्या सर्वसाधारण बदल्याच्या आगोदर वरील संदर्भीय पत्रान्वये विनंती बदल्या करण्यात आलेल्या आहेत. सदरच्या विनंती वरून झालेल्या बदल्याचे आदेश रद्द करण्यात येत आहे.

अ. क्र.	हुद्या, ब.क्र.व नाव	पुर्वीची नेमणुक ठिकाण	प्रशासकीय बदली ठिकाण	शेरा
१	-----	-----	-----	-----
२	-----	-----	-----	-----
३	-----	-----	-----	-----
४	-----	-----	-----	-----
५	पोना/३०९ दत्त रघूनाथ मुंडे	छेवगाव रंगारी	वाहतुक शाखा	बदली रद्द करण्यात येत आहे
६	-----	-----	-----	-----

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.

प्रति,

प्रभारी पोलीस अधिकारी, वाहतुक शाखा, पो.अ.का. औरंगाबाद ग्रा.
 २/- वरील नमूद पोलीस कर्मचारी यांना त्यांच्या मुळ नेमणुकीच्या ठिकाणी तात्काळ कार्यमुक्त करावे.
 प्रत:- पोलीस ठाणे देवगाव रंगारी, विरंगाव, फुलंबी/पो.मु./स्थागुशा/मोपशा/क्युआरटी/आरसीपी/
 २/- वरील प्रभारी पोलीस अधीकारी यांनी नमूद पोलीस कर्मचारी यांना त्यांच्या नेमणुकीच्या ठिकाणी हजर करून घ्या.”

11. On plain reading of the said order it reveals that there is no reference regarding constitution of the P.E.B. or decision taken by the P.E.B. for cancellation of earlier transfer order of the Police Personal and reposting them at their earlier post in the impugned order. Not only this, but it does not disclose the reason or the administrative exigencies for which earlier transfer order has been cancelled.

12. Section 22N-2 of the Maharashtra Police Act provides that the competent authority can make transfers of the Police Personnels in exceptional case, in public interest and on account of administrative exigencies, before completion of the term of the Police Personnels. The impugned order of the transfer order of the applicant is mid-term transfer. It has not been issued in view of the provisions of Section 22N of the Maharashtra Police Act.

13. Respondents by filing additional affidavit admitted the fact that no separate order regarding constitution of P.E.B. for making transfers of Police Personnels has been issued. But they reiterated that the constitution of the board has been made as per the provisions of Maharashtra Police Act and it has been mentioned in the minutes of the meeting dated 12.05.2017. This shows that no separate order regarding constitution of Police Establishment Board by Respondent No.2 as required under Section 22J-1 of the Maharashtra Police Act has been issued. Not only this but on perusal of the minutes of the meeting dated 12.05.2017 produced by Respondent it reveals that there is no mention about the constitution of the Board as per the said provisions. Mere mentioning of the fact in the minutes is not sufficient to show that the P.E.B. has really has been constituted as per provisions of Section 22J-1 of the

Maharashtra Police Act. Therefore it creates suspicion regarding contention of the Respondent that P.E.B. has been constituted and its meeting was held on 12.05.2017. On perusal of the alleged minutes of the meeting dated 12.05.2017 of the P.E.B. it reveals that the issue regarding transfer made by Predecessor in office of the Respondent No.2 it has been considered in the meeting and it has been noticed that the Predecessor in the office of the Respondent No.2 made transfers of the Police Personnel without obtaining approval of the P.E.B. and therefore they decided to revoke / cancel the earlier transfer order and reposted applicant at the place of his earlier posting.

14. It further reveals from the minutes of Police Establishment Board that the meeting has been called as the Respondent No.2 received anonymous compliant from the Police Personnels regarding the transfers of the same of the Police Personnels made by her Predecessor in the office. The said decision to cancel the earlier transfer order has been taken to correct the irregularity committed by Predecessor in office of Respondent No.2 but the Respondent No.2 without curing defective method adopted by Predecessor office committed the same mistake and issued the impugned order without establishing Police Establishment Board as required under Section 22J-1 of Maharashtra Police Act.

15. As there is no order regarding constitution of Police Establishment Board it creates doubt regarding alleged meeting of the said P.E.B. held on 12.05.2017 and the decision taken therein. Therefore I do not find substance in the submission advanced on behalf of the Respondents that the Board has been constituted and P.E.B. has decided to cancel the earlier transfer of the applicant and others and reposted them at their earlier

place of posting. The Applicant has been transfer in the Traffic Police Department by order dated 27.03.2017. He joined the Traffic Police Department on 29.04.2017. Within a period of two months, he has been transferred from that post. He has not completed his normal tenure of 5 years at that post. The impugned transfer is a mid-term transfer. Respondents have not followed the provisions of Section 22N-2 of the Maharashtra Police Act while making mid-term transfer of the Applicant. They have not recorded reasons and also not cited exceptional circumstances for the transfer of the applicant and for revoking his earlier transfer order. Not only this but the Respondents have not shown the exceptional circumstances or public interest or administrative exigencies for issuing impugned transfer order. Therefore in the absence of the said ground the same cannot be said to be in accordance of the provisions of Section 22N-2 of the Maharashtra Police Act. Respondent No.2 has not followed the provisions of the Maharashtra Police Act and issued the impugned order in violation of the provisions of the Act. Impugned order seems to be arbitrary. Therefore it requires to be quashed and set aside by allowing the O.A.

16. In view of the above the said discussion the O.A. stands allowed. Impugned order dated 15.05.2017 is hereby quashed and hereby set aside. Respondent No.2 is directed to repost the applicant at his earlier place of posting immediately. No order as to costs.

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

prk