

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 13 OF 2017**

**DISTRICT: - NANDED.**

**Shri Ramesh S/o Naraya Swami,**

Age : 50 years, Occu: Service as  
Police Inspector, Police Station,  
Mudkhed, Tq. Mudkhed, Dist. Nanded.  
R/o. Mansi, C/o. Sanjay Aaulwar,  
Near Municipal Council, Mudkhed,  
Tq. Mudkhed, Dist. Nanded.

.. APPLICANT.

**V E R S U S**

**1. The State of Maharashtra,**

Through Secretary,  
Home Department,  
Mantralaya, Mumbai-32.

**2. The Special Inspector General of**

**Police,** Nanded Range,  
Nanded, Dist. Nanded.

**3. The Superintendent of Police,**

Nanded, Dist. Nanded.

**4. Sonaji S/o. Suryabhan Amle,**

Age : 52 years, Occ: Service as  
Police Inspector, Police Station,  
Mukhed, Dist. Nanded.

.. RESPONDENTS

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**APPEARANCE :** Shri D.T. Devane – learned Advocate  
for the applicant.

: Mrs. Priya R. Bharaswadkar –  
learned Presenting Officer for the  
respondent Nos. 1 to 3

: None appears for respondent No. 4.

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**CORAM** : **HON'BLE SHRI B.P. PATIL,**  
**MEMBER (J)**  
**DATE** : **22<sup>ND</sup> SEPTEMBER, 2017.**  
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### **ORDER**

1. By filing the present Original Application, the applicant has challenged the impugned order of transfer dated 4.1.2017 issued by the respondent No. 2 by which he has been transferred from Police Station Mudkhed Tq. Mudkhed, Dist. Nanded to Shivaji Nagar Police Station, Nanded and prayed to quash and set aside the said order.

2. The applicant came to be appointed as a Police Sub Inspector by direct recruit through Maharashtra Public Service Commission (for short 'the Commission) in the year 1993-94. After regular appointment he was promoted as Assistant Police Inspector in the year 2004 and in the month of September, 2009 he was promoted as Police Inspector and since then he is working in that cadre. In the year 2014 he was transferred to Nanded from Latur. Thereafter, he joined at Mudkhed Police

Station on 07.12.2015 temporarily and thereafter he was given regular posting at Mudkhed Police Station by order dated 20.02.2016 and since then he is working at Mudkhed Police Station. He is not due for transfer, but on 04.01.2017 respondent No. 3 issued a transfer order and transferred him from Mudkhed Police Station to Shivaji Nagar Police Station at Nanded before completion of his regular tenure of posting. It is contention of the applicant that transfer order has been issued by respondent No. 3 without recommendation of the Police Establishment Board, as provided under Section 22-N of the Maharashtra Police Act.

3. It is his contention that no special reason has been recorded while effecting his transfer. He has been transferred before completion of his regular tenure of posting of two years and, therefore it is in contravention of the provision of Section 22-N of Maharashtra Police Act. It is his contention that the respondent No. 4 has been posted at Mudkhed by transfer from Hadgaon though he was not due for transfer. It is his contention that

respondent No. 4 ought to have posted at Police Station Shivaji Nagar, Nanded, but the respondent No. 3 has transferred the respondent No. 4 and posted at Mudkhed Police Station in place of the applicant with mala fide intention to accommodate him. Therefore, he prayed to quash the impugned transfer order dated 04.01.2017 and to repost him at Mudkhed by allowing the Original Application.

4. Respondent Nos. 2 & 3 have filed an affidavit in reply and resisted the contentions of the applicant. It is their contention that the applicant was transferred from Latur to Nanded in the year 2014 and thereafter he was deployed at Mudkhed Police Station by an order dated 20.02.2016. He was not transferred to Mudkhed Police Station but thereafter on 04.01.2017 as per recommendation of the District Police Establishment Board, he has been transferred to Shivaji Nagar Police Station Nanded from Mudkhed.

5. It is their contention that as an internal arrangement the applicant has been posted at Mudkhed Police Station,

but he was not discharging his duties properly at Police Station, Mudkhed. Therefore, the Sub Divisional Police Officer, Nanded (Rural) submitted the default report of the applicant vide letter dated 23.07.2016, 18.09.2016, 09.10.2016 and 29.10.2016 and recommended for transfer of the applicant to another Police Station. Not only this, but respondent Inspector, Local Crime Branch Nanded had also submitted the default report of the applicant and stated that the applicant has failed to discharge his duty. The departmental enquiry is pending against the applicant, which is initiated by the Special Inspector General of Police, Nanded Range Nanded by an order dated 04.04.2016. The applicant was posted at Mudkhed Police Station and his headquarter was Mudkhed. The applicant used to stay at Nanded City. Mudkhed city is sensitive and, therefore, it is expected that the applicant has to stay at the headquarter, but the applicant used to stay at Nanded City and used to travel to Mudkhed from Nanded to discharge his duties. Considering all these facts, the District Police Establishment Board recommended transfer of the

applicant and accordingly the applicant has been transferred to Shivaji Nagar Police Station at Nanded from Mudkhed Police Station on executive post. It is their contention that the applicant has been transferred to Shivaji Nagar Police Station, Nanded on administrative ground and, therefore, the impugned transfer order is legal. Hence, they prayed to reject the present Original Application.

6. The applicant has filed rejoinder affidavit and contended that the Police Establishment Board at District level has not been constituted in view of the provisions of Section 22J-1 of the Maharashtra Police Act. It is his contention that as per the provisions of the Section 22J-1 the senior most Additional Superintendent of Police is one of the members of the Board. One Shri. Avinash Bargal is senior most Additional Superintendent of Police in the District and Shri. Sandeep Doiphode is junior to him. But Shri. Bargal was not appointed as a Member of the Board and, therefore, the board constituted by the respondent No. 3 is not legal one and consequently the decision taken

by the Board is not also legal. It is his contention that he has not been held guilty for dereliction in duty nor any departmental enquiry is initiated against him. He has submitted that there are only complaints against him and, therefore, the complaints received to the respondent No. 3 against him cannot be considerable ground for his transfer and, therefore, he prayed to allow the present Original Application.

7. Heard Shri D.T. Devane, learned Advocate for the applicant and Mrs. Priya R. Bharaswadkar, learned Presenting Officer for respondent Nos. 1 to 3. None appears for respondent No. 4. I have perused the application, affidavit, affidavit in reply filed by the learned Presenting Officer for the respondents. I have also perused the documents placed on record by both the parties.

8. Learned Advocate for the applicant has submitted that the applicant has been transferred in Nanded District in the year 2014. Thereafter, he has been posted at Mudkhed Police Station on 7.5.2015. Thereafter, he has

given regular posting at Mudkhed by an order dated 20.02.2016, a copy of which is placed on record at page-10 of the O.A. He has submitted that the said order is transfer order and it has been made on the recommendation of the Police Establishment Board at district level. He has submitted that the applicant has not completed his regular tenure of two years at Mudkhed and he has been transferred by the impugned order dated 04.01.2017, a copy of which is placed on record at page No. 11 of the O.A. He has submitted that the said order shows that the applicant has been transferred on administrative ground.

9. He has argued that there is no mention in the transfer order about the recommendation of the District Police Establishment Board for his transfer and, therefore, the said order is in contravention of the provisions of Section 22-N of the Maharashtra Police Act. He has submitted that no special reasons and exceptional circumstances have been recorded while making midterm, mid-tenure transfer of the applicant and, therefore, it is in



violation of the provisions of Section 22N of the Maharashtra Police Act. He has submitted that the resolution dated 04.01.2017 passed by the Police Establishment Board at District level, Nanded, shows that the transfer of the applicant and other 5 employees has been made on administrative ground. The remark column of the said resolution has been kept blank. It has been signed by respondent No. 3, Superintendent of Police, Nanded as a Chairman of the Board, and by Shri Doiphode, Additional Superintendent of Police, Nanded, Shri Nandedkar, Dy. Superintendent of Police, Headquarter Nanded and Sub Divisional Police Officer, Dharmabad, as members. He has submitted that no such meeting of the District Police Establishment Board had been called or held on 04.01.2017, but the respondents fabricated record and prepared false resolution dated 04.01.2017. He has argued that on 04.01.2017 Shri Pradip Murlidhar Patil, Sub Divisional Police Officer, Dharmabad, has not left his headquarter and he never attended the meeting and this fact is evident from the document i.e. weekly diary of Shri Pradip Patil for the

period from 1.1.2017 to 7.7.2017, which shows that on 4.1.2017 from 9.45 a.m. to 9.00 p.m. he was present at Dharmabad and he has not left the headquarter to attend the meeting of the District Police Establishment Board. He has submitted that the very fact shows that Shri Pradip Patil had not attended the meeting of the Police Establishment Board on 4.1.2017, but the resolution dated 4.1.2017 shows that he was present in the meeting and resolution recommending transfer of the applicant has been passed in his presence. He has submitted that the respondent No. 3 thereafter has filed another affidavit stating that on that date there was teleconferencing communication in between other members of the District Police Establishment Board and Shri Pradip Patil and Shri Patil consented to the decision taken by other Members of the Board on phone. He has submitted that no record regarding phone calls showing communication between Shri Patil and the respondent No. 3 took place on 4.1.2017 has been produced in record. He has submitted that the resolution dated 04.01.2017 passed by the District Police Establishment Board has been prepared by

the respondent No. 3 to support the impugned transfer order. He has submitted that the said resolution has been prepared subsequently. He has argued that the respondents have submitted that they have not maintained the minutes of the meeting of the Police Establishment Board. He has argued that all these facts are sufficient to show that the respondent No. 3 fabricated false record showing that the meeting of the Police Establishment Board has been held on 04.01.2017 and on the recommendation of the Police Establishment Board the transfer of the applicant has been effected by the impugned order dated 04.01.2017. He has submitted that the record shows that in another case also false record showing the presence of Shri Pradip Patil for the meeting of the Police Establishment Board has been prepared though he had not attended that meeting. He has attracted my attention towards the documents regarding resolution of the District Establishment Board dated 23.02.2017, which shows that Shri Pradip Patil attended the said meeting. He has argued that the weekly diary of the Pradip Patil for the period from 19.02.2017 to

25.02.2017 shows that on 23.02.2017 he was present at Dharmabad from 7.30 a.m. to 7.00 p.m. and he had not attended the meeting of the Police Establishment Board on that day. He has submitted that the respondent No. 3 has intentionally prepared the false record in respect of the meeting dated 23.02.2017 showing the presence of Shri Pradip Patil in the meeting of District Police Establishment Board. He has argued that all these facts show that the respondent No. 3 had passed the impugned order without recommendation of the District Police Establishment Board and he has prepared the false record showing that the resolution recommending the transfer of the applicant has been passed in the meeting of the District Police Establishment Board, which was held on 04.01.2017 in the presence of members of the Board.

10. He has further submitted that respondent No. 3 has not constituted the Police Establishment Board at district level in view of the provisions of Section 22-J-1 of the Maharashtra Police Act, which provides as follows: -

**“22J-1. Police Establishment Board at District Level**

(1)The State Government shall, by notification in the *Official Gazette*, constitute for the purposes of this Act, a Board to be called the Police Establishment Board at District Level.

(2)The Police Establishment Board at District Level shall consist of the following members, namely:-

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|--|----------------------|
| (a) District Superintendent of Police                | .. Chairperson       |
| (b) Senior-most Additional Superintendent of Police. | .. Member            |
| (c) Deputy Superintendent of Police (Head Quarter)   | .. Member Secretary; |

Provided that, if none of the aforesaid members is from the Backward Class, then the District Superintendent of Police shall appoint an additional member of the rank of the Deputy Superintendent of Police belonging to such class.

Explanation. – For the purpose of this sub-section, the expression “Backward Class” means the Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Special Backward Category and Other Backward Classes.”

11. He has submitted that the Police Establishment Board has to be constituted in view of provisions of Section 22J-1(1) of the Act. It shall consists of three

members and the Senior most Additional Superintendent of Police, shall be one of the members of the Police Establishment Board at District Level. He has submitted that Shri. Avinash Bargal is the senior most Additional Superintendent of Police in Nanded district, but he has not been appointed as a Member of the Establishment Board. Not only this, but the respondent No. 3 has included 4 members in the meeting, which is against the provisions of Section 22J-1 and, therefore, the committee consists of 4 members is in contravention of the provisions of Section 22J-1 of the Maharashtra Police Act. Therefore, same cannot be said to be legal one and consequently alleged resolution dated 04.01.2017 passed by the committee is illegal. On that ground also he has prayed to quash and set aside the impugned transfer order by allowing the present Original Application.

12. Learned Presenting Officer has submitted that the applicant has not been transferred to Mudkhed. She has submitted that only he has been assigned duties at Mudkhed Police Station and, therefore, he cannot claim

that he should be retained at Mudkhed. She has submitted that there were several complaints against the applicant about his misbehavior and dereliction in duty. The Sub Divisional Officer has submitted the report about his dereliction in duties and requested to transfer him from Mudkhed and, therefore, his case has been placed before the Police Establishment Board at District level. Police Establishment Board recommended his transfer by passing resolution dated 04.01.2017. On the basis of the said resolution, respondent No. 3, the Superintendent of Police, Nanded, issued the impugned transfer order on administrative ground and transferred the applicant on administrative ground. She has submitted that there is no violation of any provisions of the Maharashtra Police Act, 1951 and, therefore, she supported the impugned order of transfer of the applicant and prayed to reject the present Original Application.

13. Learned Presenting Officer has further submitted that the Police Establishment Board at District Level has been duly constituted in view of the provisions of Section

22J of the Maharashtra Police Act. She has submitted that in view of the provisions of Sub-section (2) of the Section 22J-1 the Police Establishment Board at District level shall consist of District Superintendent of Police as Chairperson; Senior-most Additional Superintendent of Police as Member; and Deputy Superintendent of Police (Head Quarter) as Member Secretary. She has submitted that if none of the aforesaid members is from Backward Class then the District Superintendent of Police shall appoint an additional member of the rank of the Deputy Superintendent of Police belonging to such class, in view of the provisions of proviso to Sub-section (2) of Section 22J(1).

14. Learned Presenting Officer has further submitted that the Superintendent of Police, Nanded constituted the Police Establishment Board consisting of 4 members, which includes he himself; Shri Sandeep Doiphode, Additional Superintendent of Police, Nanded, as Member; and Shri V.P. Nandedkar, Deputy Superintendent of Police (Head Quarter) as Member Secretary; and Shri Pradip



Murlidhar Patil, Dharmabad, Sub Divisional Police Officer as Member. She has further submitted that Shri Sandeep Doiphode, was senior most Additional Superintendent of Police at the Haedquarter at Nanded. Therefore, he was appointed as a Member of the said committee. She has submitted that as the Superintendent of Police, Shri Sandeep Doiphode, Senior most Additional Superintendent of Police, Nanded and Shri Nandedkar, Deputy Superintendent of Police (Head Quarter), are not belonging to Backward Class, the Superintendent of Police appointed Shri Pradip Patil, who is from the Backward Class as provided in Explanation to the proviso to Sub-Section (2) of Section 22J-(1) as additional Member of the Police Establishment Board. She has fairly admitted that one Shri Avinash Bargal, who is working at Mukhed is senior most Additional Superintendent of Police working as Additional Superintendent of Police in Nanded district. Mukhed is far away from Nanded and, therefore, Shri Avinash Bargal was not appointed as member of the Police Establishment Board, but the senior most Additional Superintendent of Police (Head Quarter) viz. Shri Sandeep

Doiphode, has been appointed as a Member of the Police Establishment Board. She has submitted that there is no illegality in the constitution of the Police Establishment Board and, therefore, the decision taken by the said Board is legal one.

15. Learned Presenting Officer has further submitted that Shri Pradeep Patil, Sub Divisional Police Officer, Dharmabad was member of the Police Establishment Board. On 04.01.2017, he had not attended the meeting of the Police Establishment Board personally. The Superintendent of Police, Shri Sanjay Yenpure, directed him to remain present at headquarter on that date as they were observing Maharashtra Police Raising Day Celebration Week at Dharmabad Sub-Division area and on the Public Complaints Redressal Day on that day and School Children's Police Station visits were also arranged, on that day. She has submitted that the members of the Police Establishment Board, who attended the meeting on 4.1.2017, were contacted with Shri Pradip Patil by teleconference through Home Dy. Superintending of

Police, Nanded and discussed about the subjects kept in the meeting. Therefore, Shri Pradip Patil, Dy. Superintendent of Police, Dharmabad, consented to the decision taken by other members as regards transfers of the Police Officers including the applicant and, thereafter, the resolution has been passed accordingly. The Police Establishment Board recommended the transfer of the applicant and other Police Officers. She has submitted that on the request of Shri Pradip Patil, the resolution was sent to him for obtaining his signature. Thereafter, he put signature on the resolution passed in the meeting. She has submitted that as Shri Pradip Patil, Sub Divisional Police Officer, Dharmabad was consulted by teleconferencing and he had participated in the meeting through teleconference, there is no illegality on the part of the respondents while taking decision in the Police Establishment Board. She has further submitted that the presence of all the members of Police Establishment Board to the meeting is not mandatory and the Police Establishment Board can take decision in presence of some of its members also and, therefore, even it is

assumed that Shri Pradip Patil, had not attended the meeting of the Board, held on 04.01.2017, the same cannot vitiate the decisions taken in the meeting. Therefore, she supported the impugned order of transfer.

16. Learned Presenting Officer has further submitted that the applicant has been transferred within the district and, therefore, no question of completion of his normal tenure, arises. She has further argued that the applicant was deputed at Mudkhed and it does not amount transfer. Therefore, he can claim that he has completed his normal tenure of posting there. She has submitted that the impugned order is legal and proper and, therefore, she prayed to reject the present Original Application.

17. Admittedly, the applicant was transferred to Nanded district from Latur in the month of May, 2014. Admittedly, on 7.12.2015 he was deputed at Mudkhed Police Station and since then he is working there. Thereafter, he was given regular posting at Mudkhed Police Station by an order dated 20.2.2016 on the basis of recommendation of the Police Establishment Board at

District level. Admittedly, the applicant has not completed his normal tenure of posting of two years on the present post in view of the provisions of Section 22N(1)(c) of the Maharashtra Police Act. The applicant came to be transferred from Police Station Mudkhed Tq. Mudkhed, Dist. Nanded to Shivaji Nagar Police Station, Nanded, by the impugned transfer order dated 04.01.2017 on the recommendation of the Police Establishment Board dated 04.01.2017.

18. On going through the documents on record i.e. the copy of the impugned order of transfer is placed on record at Annexure 'A-2' page No. 11 it reveals that by the said order in all 6 Police Officers including the applicant have been transferred on administrative ground. The said order does not disclose that the transfer has been made on the basis of the recommendation and decision taken by the Police Establishment Board at district level. The said order material and, therefore, the same is reproduced as under:-

“आदेश

खालील नमुद पोलीस अधिका-यांच्या बदल्या त्यांचे नांवासमोर दर्शविलेल्या ठिकाणी तात्काळ प्रभावाने प्रशासकिय कारणावरून करण्यांत येत आहेत.

| अ. क | पदनाम  | नांव                      | कोटून          | कोठे                 | शेरा |
|------|--------|---------------------------|----------------|----------------------|------|
| १.   | पोनि   | श्री. एस.एस. आम्ले        | नियंत्रण कक्ष  | पोस्टे मुदखेड        |      |
| २.   | पोनि   | श्री. आर.एन. स्वामी       | पोस्टे मुदखेड  | पोस्टे शिवाजीनगर     |      |
| ३.   | सपोनि  | श्री. एम.बी.जाधव          | पोस्टे मांडवी  | पोस्टे मुदखेड दुय्यम |      |
| ४.   | सपोनि  | श्री. टि.आर. भालेराव      | शवाशा          | पोस्टे मांडवी        |      |
| ५.   | सपोनि  | श्री. शेख रहेमान शेख रसुल | नियंत्रण कक्ष  | स्थागुशा             |      |
| ६.   | सउपोनि | श्री. जी.व्ही. लष्करे     | पोस्टे भागयनगर | शवाशा                |      |

तरी संबंधीत पोलीस अधिका-यांनी नुतन बदलीचे ठिकाणी तात्काळ हजर होऊन कार्यभार स्विकारून अनुपालन अहवाल या कार्यालयास सादर करावा.”

19. But the respondents have come with the case that the transfers have been effected on the basis of recommendation and decision taken by the Police Establishment Board, Nanded, in its meeting dated

04.01.2017. The resolution of the Police Establishment Board is placed on record at page No. 28, which reads as follows: -

“जिल्हा आस्थापना मंडळ यांचा ठराव

नांदेड दि. ०४.०१.२०१७

मा. पोलीस महासंचालक, महाराष्ट्र राज्य, मुंबई यांचे परिपत्रक क्रं. पोमसं/३/१०/६/जीट-१५(सुधारीत)/५७८/२०१४ दि. १८.३.२०१५ नुसार तसेच महाराष्ट्र शासन अध्यादेश क्रं. २ म्झभ्ल म्ळझश्रझष्ट पोलीस अधीनीयम १९५१ चे सुधारित कलम-२२ (न)(अ) पोट कलम (१) मधी (क) मधील तरतुदीनुसार नांदेड जिल्हा आस्थापना मंडळाच्या शिफारशी नुसार खालील नमुद पोलीस अधिकारी यांची प्रशासकीय कारणास्तव त्यांचे नावासमोर दर्शविल्या प्रमाणे बदली करण्यात शिफारस आहे.

| अ. क्र | पेलीस अधिकारी यांचे नांव व हुददा  | कोटून          | कोठे             | शेरा |
|--------|-----------------------------------|----------------|------------------|------|
| १.     | पे.नि. श्री. एस.एस.आम्ले          | नियंत्रण कक्ष  | पोस्टे मुदखेड    |      |
| २.     | पो.नि.श्री. आर.एन.स्वामी          | पोस्टे मुदखेड  | पोस्टे शिवाजीनगर |      |
| ३.     | सपोनि / श्री. एम.बी.जाधव          | पोस्टे मांडवी  | पोस्टे मुदखेड    |      |
| ४.     | सपोनि / श्री. टि.आर. भालेराव      | शवाशा          | पोस्टे मांडवी    |      |
| ५.     | सपोनि / श्री. शेख रहेमान शेख रसुल | नियंत्रण कक्ष  | स्थागुशा, नांदेड |      |
| ६.     | पोउपनि/श्री. जी.व्ही. लष्करे      | पोस्टे भागयनगर | शवाशा, नांदेड    |      |

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| सहि/-<br>(संजय येनेपूरे)<br>पोलीस अधीक्षक, नांदेड<br>जिल्हा आस्थापना मंडळ<br>अध्यक्ष | सहि/-<br>(संदिप डोईफोडे)<br>अपर पोलीस अधीक्षक, नांदेड<br>जिल्हा आस्थापना मंडळ<br>सदस्य | सहि/-<br>(वि.पी. नांदेडकर)<br>पो.उप.अधीक्षक (मु) नांदेड<br>जिल्हा आस्थापना मंडळ<br>सचिव | सहि/-<br>(प्रदिप पाटील)<br>उप वि.पो.अ.धर्माबाद<br>नांदेड, जिल्हा<br>आस्थापना मंडळ,<br>सदस्य |
|--|--|---|---|

20. It is material to note here that the respondents have submitted that they never maintain the minutes of the meeting of the District Police Establishment Board. Therefore, there is no record to show that the meeting of the District Police Establishment Board has been called on 04.01.2017 and the proposal regarding transfer of the Police Officers working in the Nanded District had been discussed in the meeting in presence of all the members of Police Establishment Board and thereafter, decision has been taken. Except the resolution dated 04.01.2017, there is nothing on record to show that the meeting of the Police Establishment Board at district level has been called on that date and the proposal regarding transfer of the Police Officers including the applicant has been considered. In the absence of the record, the contention of the respondents is not acceptable. As there is no record, it is difficult to accept the contentions of the respondents



that they discussed the default report of the applicants, as well as, complaints and report of the senior officers regarding his misbehavior. Therefore, it is difficult to accept the contentions of the respondents that they considered the said report and after applying the mind decided to effect the transfer of the applicant and other Police Officers on administrative ground by recording reasons. Neither resolution dated 04.01.2017 (page-28 of the paper book of O.A.) nor the impugned order dated 04.01.2017 issued by the Superintendent of Police, Nanded (page-11 of the paper book of O.A.), provide grounds/reasons and exceptional circumstances in which the applicant has been transferred before completion of his tenure.

21. Admittedly, the transfer of the applicant is midterm and mid-tenure. The respondents have come with the case that the transfer of the applicant was made, in view of the provisions of Sub-section (2) of Section 22N, which empowers the competent authority i.e. the Police Establishment Board at district level to make midterm

transfer of any Police Personnel in exceptional cases, in public interest and on account of administrative exigencies. There is no dispute about the powers of Police Establishment Board at district level to transfer any Police Personnel in midterm by exercising the said powers given in Sub-Section (2) of Section 22N of the Maharashtra Police Act, but the Police Establishment Board has to establish that the transfer has been made in exceptional circumstances, in the public interest and on account of administrative exigencies. They have to record reasons in that regard. But as discussed above, they have not maintained the minutes of the meeting. Not only this, but they have not recorded any exceptional circumstances or special reasons in the resolution dated 04.01.2017 passed in the meeting of the Police Establishment Board, which is at page-28 of the paper book of the O.A. Not only this, but the impugned order does not disclose the exceptional circumstances or the administrative exigencies for making transfer of the applicant. The impugned order even does not disclose the recommendation and decision of the Police Establishment Board. In these circumstances, it is

difficult to accept the contentions of the respondents that proposal regarding transfer of the applicant was placed before the Police Establishment Board at district level and after considering the default report against the applicant the Police Establishment Board has decided to transfer the applicant. The respondents, as well as, Police Establishment Board at district level have not followed the due procedure while taking decision to transfer the applicant and, therefore, the decision of the Police Establishment Board cannot be said to be legal.

22. Police Establishment Board at district level has been constituted by the State Government in view of the provisions of Section 22J-1(1) by notification in official gazette of the Government. Sub section (2) of Section 22J-1 provides that Police Establishment Board at district level shall consists of District Superintendent of Police as Chairperson; Senior-most Additional Superintendent of Police as Member; and Deputy Superintendent of Police (Head Quarter) as Member Secretary. Proviso to it provides that, if none of the aforesaid members is from the

Backward Class, then the District Superintendent of Police shall appoint an additional member of the rank of the Deputy Superintendent of Police belonging to such class.

23. In the instant case, the District Superintendent of Police, Nanded, constituted the Police Establishment Board at district level comprising of himself viz. Shri Sanjay Yenpure, senior most Additional Superintendent of Police at the District headquarter viz. Shri. Sandeep Doiphode, Dy. Superintendent of Police, (Headquarter) Nanded, viz. Shri Nandedkar. As none of them is belonging to backward class, he has appointed Deputy Superintendent of Police, Dharmabad Division, Dharmabad viz. Shri Pradip Patil, who belongs to Backward Class, as an additional member of the board. Admittedly, one Shri. Avinash Bargal is serving as Additional Superintendent of Police at Mukhed, District Nanded. As admitted by the respondents Shri. Avinash Bargal is senior most Additional Superintendent of Police in Nanded District. Sub section (2) of Section 22J-1

provides that senior most Additional Superintendent of Police shall be member of the Police Establishment Board. It does not provide that the senior-most Additional Superintendent of Police means the senior-most Additional Superintendent of Police at the district headquarter shall be member of the Police Establishment Board. The Government has issued notification in view of the provisions of Section 22J-1 (1) and constituted the Police Establishment Board consisting members as provided in Sub Section (2) of Section 22J-1, but Shri Sanjay Yenpure, the then Superintendent of Police exceeded his power and appointed Shri. Sandeep Doiphode, Additional Superintendent of Police at Police Headquarter Nanded, as member of the Police Establishment Board though Shri Avinash Bargal, Senior most Additional Superintendent of Police, who was working at Mukhed was available.

24. In fact, Shri. Avinash Bargal, senior most Additional Superintendent of Police in the district, who is posted at Mukhed ought to have been appointed as one of the members of the Police Establishment Board, in view of the

notification issued by the Government in view of the provisions of Section 22J-1(1) and (2). But the respondent No. 3 i.e. the Superintendent of Police, Nanded has illegally appointed Shri Sandeep Doiphode as member of the Police Establishment Board instead of Shri Avinash Bargal. The constitution of the Police Establishment Board at district level Nanded is not in accordance with the provisions of Section 22J-1(1) of the Maharashtra Police Act. The Board constituted by the Superintendent of Police is not legal one and, therefore, it cannot exercise the power given to it in view of the provisions of Sub-Section (2) of Section 22N(1) of the Maharashtra Police Act. Consequently, the impugned decision taken by the Police Establishment Board, Nanded, transferring the applicant and other Police Officers is not legal one. On that ground also, the impugned order of transfer requires to be quashed and set aside.

25. On perusal of the impugned order dated 4.1.2017 and resolution passed by the Police Establishment Board at district level dated 4.1.2017, it reveals that the remark

column mentioned therein had been kept blank. The respondents had not taken pain to record the reasons i.e. remarks for making transfer of the applicant and other Police Officers. This fact shows that the respondents had acted in a casual manner while making the transfer of the applicant. They have not followed the provisions of Section 22N of the Maharashtra Police Act, in its true spirit.

26. On perusal of the resolution of the Police Establishment Board at district level dated 4.1.2017, it reveals that all 4 members have decided to transfer the applicant and other Police Officers and all members were present for the meeting. The respondent No. 2 has come with a case that Shri Pradip Patil had not attended the meeting and he had been contacted on teleconference and he consented for the decision taken by other members and after preparing the resolution his signature is obtained thereafter. Shri. Pradip Murlidhar Patil, Sub Divisional Police Officer is appointed at Dharmabad. On 4.1.2017 he was present at Dharmabad since 9.40 a.m. to 9.00 p.m.

and he had not left the headquarter on that day to attend the meeting of the District Police Establishment Board and this fact has not been disputed by the respondents. The applicant produced the copy of the weekly diary of Shri. Pradip Patil for the period from 1.1.2017 to 7.7.2017. On perusing the entries made in the said diary against the date of 4.1.2017 it reveals that there is no mention in the said diary that Shri Pradip Patil was contacted by the Superintendent of Police, Nanded or Home Deputy Superintendent of Police in connection with the subject matter placed before the Police Establishment Board. Diary of the Police Officers is important document. They have to take note of the important events in it, but the diary dated 4.1.2017 of Shri. Pradip Patil shows that he was never contacted by the Superintendent of Police of Deputy Superintendent of Police (Home) on that day. Had it been a fact that Shri. Pradip Patil was contacted by the Superintendent of Police or by Home Dy. Superintendent of Police in connection with the subject matter more particularly transfers of the Police Officers placed before the Police Establishment Board then definitely Shri.



Pradip Patil ought to have made entry in his diary in that regard, but fact is different. There is no entry in the diary dated 4.1.2017 in that regard. The very fact falsifies the contention of the respondents that Shri Pradip Patil was consulted on that day before passing the resolution. The respondents neither produced the notice inviting the members of the Police Establishment Board for the meeting held on 4.1.2017 nor produced minutes of the meeting nor they produced any document showing that Shri. Pradip Patil was really consulted on that day by teleconferencing. There is no document on record to show that when Shri. Pradip Patil signed the resolution on 4.1.2017.

27. The impugned order dated 4.1.2017 does not disclose that the transfer of the applicant and other Police Officers have been made on the basis of the recommendation / decision taken by the Police Establishment Board in the meeting held on 4.1.2017. These facts are sufficient to falsify the contention of the respondent No. 2 that the meeting of the Police

Establishment Board has been held on 4.1.2017 and the decision to transfer the applicant and other Police Officers has been taken in a meeting and Shri. Pradip Patil was consulted on phone before taking the decision.

28. The applicant has produced one more document i.e. the resolution of the Police Establishment Board at district level dated 23.2.2017, which shows that the meeting was attended by all the members of the Police Establishment Board and in that meeting the decision, to post some of the Police Officers at different places, has been taken. The applicant has produced weekly diary of Shri. Pradip Patil for the period from 19.02.2017 to 25.02.2017. On perusal of the said diary, it reveals that Shri. Pradip Patil, was present at headquarter at Dharmabad from 7.30 a.m. to 7.00 p.m. and he had not gone to Nanded on that day to attend the meeting of the Police Establishment Board held on that day, in which the decision to transfer other Police Officers has been taken. This also shows that the resolution dated 23.02.2017 might have been prepared subsequently showing that Shri. Pradip Patil attended the

said meeting and the decision was taken in his presence, though he was not present on that day.

29. The above cited instance shows that the then Superintendent of Police, Shri. Sanjay Yenpure, Nanded, prepared the resolution of the Police Establishment Board subsequently to suit his purpose. This shows that the respondent No. 2 the then Superintendent of Police had issued the impugned order dated 4.1.2017 without recommendation and decision of the Police Establishment Board. The above said fact shows that the resolution dated 4.1.2017 of the Police Establishment Board has been prepared subsequently showing that all the members attended the meeting and the decision has been taken in that meeting to transfer the applicant. This type of conduct is not expected from the Senior Officers like the respondents. The respondents have followed the strange procedure, which is not in accordance with the provisions of Section 22N of the Maharashtra Police Act. The respondent No. 3 has acted highhandedly arbitrarily in effecting the transfer of the applicant. Therefore, the impugned order requires to be quashed and set aside.

30. No doubt the provisions of Sub-section (2) of Section 22N of the Maharashtra Police Act, empowers the competent authority provided therein to make midterm transfer of any Police Officer for exceptional cases, in the public interest and on account of administrative exigencies. Even, if it is assumed that there were complaints against the applicant about his behaviour and conduct and several default reports have been made against him, the respondent No. 3 cannot transfer him without following the provisions of Section 22N of the Maharashtra Police Act. If the respondent No. 3 intends to transfer the applicant on any of the grounds mentioned in Section 22N (2), then he has to follow the due process of law while effecting the transfer by taking recourse to the provisions of law. But in the instant case, the respondent No. 3 has not followed the provision of Section 22N (2) while effecting the transfer of the applicant and, therefore, the impugned order dated 4.1.2017 transferring the applicant is not legal and proper.

31. On considering the above said discussion, it is crystal clear that the impugned order is not legal one since

no exceptional case has been made out for making midterm transfer of the applicant in public interest or on account of administrative exigencies. No reasons have been recorded by the Police Establishment Board at district level while making the transfer of the applicant. Not only this, but the Police Establishment Board constituted at district level, which took decision about the transfer of the applicant, has not been duly constituted as per the provisions of Section 22J-1. The very constitution of the Police Establishment Board at district level at Nanded is not in accordance with the provisions of Section 22J-1 (2) and, therefore, no question of exercising the powers of transfers of the Police Personnel in view of the provisions of Section 22N (2) by it, arises. Not only this, but the respondent No. 3 had not maintained the record of the minutes of the meeting of the Police Establishment Board. The documents on record show that he prepared the record regarding the resolution passed by the Police Establishment Board at district level subsequently to support the impugned transfer order issued by him. The applicant has not completed his normal tenure of posting

at Mudkhed, but he has been transferred midterm without following the provision of law by respondent No. 3 by issuing the impugned transfer order. Therefore, the impugned transfer order requires to be quashed and set aside by allowing the present Original Application.

32. In view of the aforesaid discussion, the present Original Application is allowed. The impugned order of transfer dated 04.01.2017 transferring the applicant from Police Station Mudkhed Tq. Mudkhed, Dist. Nanded to Shivaji Nagar Police Station, Nanded, is hereby quashed and set aside. The applicant shall be reposted at Police Station Mudkhed, Tq. Mudkhed, District Nanded immediately. The respondent No. 3 shall issue necessary order in that regard.

There shall be no order as to costs.

**MEMBER (J)**

O.A.NO.13-2017(SB)-HDD-2017-transfer