

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 465 OF 2017

[Subject : - Transfer]

DISTRICT: - AURANGABAD

Ashok S/o. Rangnath Barde,

Age – 45 years Occu. Service

(as Police Head Constable)

Kannad [Rural] P.S.),

R/o : Room No. 8, Bldg. No. 27,

Police Colony, TV Centre,

N-10, Aurangabad.

.. APPLICANT.

V E R S U S

1) The State of Maharashtra,

Through its Secretary,

Home Department, M.S.

Mantralaya, Mumbai – 32.

2) The Superintendent of Police,

Aurangabad [Rural],

Aurangabad.

.. RESPONDENTS

APPEARANCE : Shri Avinash Deshmukh – learned
Advocate for the applicant.

: Shri N.U. Yadav – learned Presenting
Officer for the respondents.

CORAM : **HON'BLE SHRI B.P. PATIL,**
MEMBER (J)

DATE : **22ND DECEMBER, 2017.**

ORDER

1. By filing the present Original Application, the applicant has challenged the transfer order dated 31st May, 2017 issued by the respondent No. 2, by which he has been transferred from Traffic Branch, Aurangabad to Police Station, Kannad (Rural).

2. The applicant joined the Police Department in the month of February, 1994 as Police Constable in the State Reserve Police Force, Group-II, Pune. He was designated as a Naik Police Constable in the year 2006. In the year 2008 he was transferred from SRPF to the establishment of respondent No. 2 i.e. the Superintendent of Police, Aurangabad [Rural], on his request. On 5.3.2014 he was promoted to the cadre of Police Head Constable and since then he is working in that cadre. In the month of June, 2016 he was transferred from Local Crime Branch to the Traffic Branch by the respondent No. 2, on his request. He was relieved from LCB on 30.07.2016 and on the same day he had reported to PI, Traffic Branch, Aurangabad [Rural]. Since then he is working in the Traffic Branch.

Thereafter, he was sent to the “गुन्हे अन्वेषण प्रशिक्षण विद्यालय, नाशिक” for training relating to “Accidents and Handling of Traffic”. He hardly worked for 10 months in the Traffic Branch and he is not due for transfer, but the respondent No. 2 all of a sudden issued order dated 31.5.2017; thereby transferred the applicant from Traffic Branch to Police Station, Kannad [Rural].

3. It is the contention of the applicant that the impugned transfer order is not in accordance with the provisions of Section 22N (1) & (2) of the Maharashtra Police Act. It is his contention that the Police Establishment Board at district level has not been duly constituted by the respondent No. 1 as provided in the Maharashtra Police Act, and therefore, the impugned transfer order issued by respondent No. 1 is not legal one. It is his contention that his transfer is midterm and mid-tenure transfer and, therefore, the Hon'ble Chief Minister is the only competent authority to make such transfers in view of the provisions of Sub-section (1) of Section 22N. The impugned transfer order issued by respondent No. 2

is illegal and, therefore, he prayed to quash the impugned order of transfer by allowing the present original application.

4. Respondent No. 2 has filed affidavit in reply and resisted the contention of the applicant. It is his contention that there were serious complaints against the applicant and there was confidential report that there is possibility of creation of law and order problem and, therefore, his transfer has been made. His transfer has been made as per the recommendation of the board established under the provisions of Maharashtra Police Act and there is no illegality. Therefore, he has prayed to reject the present original application.

5. I have heard Shri Avinash S. Deshmukh, learned Advocate for the applicant and Shri N.U. Yadav, learned Presenting Officer for the respondents. I have perused application, affidavit, affidavit in reply filed by respondent No. 2. I have also perused the documents placed on record by both the sides.

6. Admittedly, the applicant was appointed as Police constable in S.R.P.F., Pune in the year 1994. He was designated as a Naik Police Constable in the year 2006. In the year 2008 he was transferred from SRPF to the establishment of respondent No. 2 i.e. the Superintendent of Police, Aurangabad, Rural Police Force, on his request and since then he is working on the establishment of respondent No. 2. Admittedly, he was promoted to the cadre of Police Head Constable w.e.f. 5.3.2014 and since then he is working in that cadre. In the month of June, 2016 he was transferred from Local Crime Branch to the Traffic Branch by the respondent No. 2, on his request. Admittedly, the applicant is working at Aurangabad since the year 2008. By the impugned order of transfer dated 31.5.2017 the applicant has been transferred from Traffic Branch to Kannad [Rural].

7. Learned Advocate for the applicant has submitted that the applicant has not completed his normal tenure of posting of 5 years as provided under Section 22N (1) (b). He has submitted that in view of the said provisions the

normal tenure for Police Constabulary shall be of 5 years at one place of posting. He has submitted that the applicant has been transferred and posted in the Traffic Branch, Aurangabad from Local Crime Branch, Aurangabad and he joined the said posting w.e.f. 30.7.2016. He has not completed 5 years tenure in that posting and, therefore, the transfer is in contravention of provision of Section 22N (1)(b).

8. He has submitted that the applicant is working in the Traffic Branch since 30.7.2016. He has been transferred within 10 months and, therefore, it is midterm transfer. He has submitted that in view of the provisions of Section 22N (1) the Hon'ble Chief Minister may transfer any Police Personnel prior to completion of his normal tenure on the ground mentioned in the clauses (a) to (e) under the proviso of Section 22N (1) of the Maharashtra Police Act thereunder. He has submitted that in any exceptional cases, in public interest and on account of administrative exigencies, the Competent Authority as provided in the explanation to Sub-section (2) of Section

22N i.e. the Police Establishment Board at District level can make mid-term transfer of any Police Personnel up to the rank of Police Inspector within the district. He has submitted that in view of the proviso to Sub-section (2) of Section 22N, the Hon'ble Chief Minister has power to transfer any Police Personnel without any recommendation of Police Establishment Board in case of any serious complaint, irregularity, law and order problem.

9. He has submitted that no contingencies as provided under Section has been arisen in this case and the order has not been issued in view of the said provision and, therefore, the impugned order is illegal. He has submitted that the respondent No. 2, the Superintendent of Police is not empowered to make midterm transfer on the ground of complaint and law and order problem and, therefore, the impugned order issued by the respondent No. 2 is not legal one. He has submitted that in view of the circulars dated 8.11.2017 and 7.10.2016 issued by the Special Inspector General of Police, it is incumbent on the

competent authority to make preliminary enquiry in the complaint against the Police Personnel and if any substance is found therein then the same enquiry report has to be placed before the concerned Police Establishment Board and the concerned Establishment Board has to consider it and after taking the note of it in the minutes of the meeting it has to pass the order of transfer of the concerned Police Personnel. He has also placed reliance on the judgment delivered by the Nagpur Bench of this Tribunal in the case of **PRAMOD SITARAM DONGRE VS. STATE OF MAHARASHTRA AND ORS. (O.A. No. 770/2016) on 7th October, 2017.**

10. Learned Presenting Officer has submitted that the applicant is serving at Aurangabad since the year 2008. He has completed his normal tenure of posting i.e. 5 years at Aurangabad and, therefore, he has been transferred by the Police Establishment Board at district level. He has attracted my attention towards the decision of the Police Establishment Board and the minutes of the meeting of the Board dated 27.5.2017 in that regard. He has

submitted that the applicant has completed his normal tenure of 5 years at Aurangabad, and he is working at Aurangabad since the year 2008 and, therefore, it cannot be said that the impugned order of the applicant is midterm transfer. He has submitted that as the transfer of the applicant has been made after completion of his normal tenure, the provisions of Sub-section (2) of Section 22N cannot be attracted in this case. He has submitted that the competent authority i.e. Police Establishment Board at district level has made the transfer of the applicant and there is no violation of the provisions of Maharashtra Police Act and, therefore, he prayed to reject the present Original application.

11. Much stress has been given by the learned Advocate for the applicant on the provision of Section 22N (1)(b) of the Maharashtra Police Act, stating that the applicant has not completed his normal tenure of 5 years at his posting in the Traffic Branch, Aurangabad, where he has been posted since 31.7.2016. Therefore, it is necessary to go through the provisions of Section 22N (1) (b) (c), which is as follows: -

**“22N. Normal tenure of Police Personnel,
and Competent Authority.**

(1) Police Officers in the police force shall have a normal tenure as mentioned below, subject to the promotion or superannuation : -

(a)

(b) for Police Constabulary a normal tenure shall be of five years at one place of posting’

(c)”

12. On going through the said provisions it reveals that the Sub-section (1) of Section 22N has been substituted by the Maharashtra Amendment Act No. 11 of 2015 w.e.f. 16.2.2015. “The above said provisions and words were substituted for the words “Any Police Personnel in the Police Force shall have a normal tenure of two years on one post or office, subject to the promotion or superannuation” by the said amendment. Prior to the amendment the tenure of the Police Personnel in the Police Force was of 2 years on one post or office, but the said provision has been deleted and new provision has been substituted by the said amendment. Now in view of the provision of Section 22N (1) (b) the normal tenure for

Police Constabulary has been fixed 5 years at **one place of posting**. Therefore, considering the said provision I have to determine as to whether the applicant has completed his normal tenure of 5 years at one place or posting. Admittedly, the applicant is posted at Aurangabad since the year 2008. No doubt thereafter he has been worked in different branches but it does not mean that his place of posting has been changed. Therefore, it can be easily said that he has completed his normal tenure of 5 years at one place of posting as provided under Section 22N (1) (b) of the Maharashtra Police Act. Consequently, it cannot be said that the impugned transfer of the applicant is a midterm or mid-tenure transfer as argued by the learned Advocate for the applicant. As it is not a midterm transfer the provision of Sub-section 2 of Section 22N or proviso to Sub-section (1) of the Section 22N will not attract in the present case. The transfer of the applicant is a general transfer after completion of his normal tenure. Therefore, the Police Establishment Board at district level as provided under

Section 22N (1), is competent transferring authority for the transfer of the applicant.

13. Respondent No. 2 has constituted Police Establishment Board consisting of herself, Additional Superintendent of Police, Aurangabad (Rural) and Dy. Superintendent of Police, Headquarter. The matter of transfer of the Police Personnel including the applicant, who are due for transfer on completion of the normal tenure has been placed before the Police Establishment Board headed by the respondent No. 2 in the meeting dated 27.5.2017. They considered the cases of all the Police Personnel due for transfer and considering the administrative exigency they passed the impugned order by which the applicant has been transferred to Kannad Police Station (Rural). The Police Establishment Board had considered the necessary aspects including their tenure, complaints against them while effecting the transfers of the applicant and other Police Personnel and thereafter took the decision and accordingly the applicant has been transferred. Therefore, in my opinion, there is

no illegality in the impugned order of transfer dated 31.5.2017.

14. The respondent No. 2 and the Police Establishment Board had followed the provisions of law, as well as, the circulars dated 8.11.2017 and 7.10.2016 referred to by the learned Advocate for the applicant and decided to transfer the applicant. Therefore, in my opinion, there is no violation of the provisions of law on the part of the Police Establishment Board, as well as, respondent No. 2.

15. Respondent No. 2 has transferred the applicant on completion of normal tenure of posting at one place by following the provisions of Section 22N (1) on the basis of decision taken by the Police Establishment Board at district level on administrative ground. There is no illegality in the impugned transfer order. Therefore, no interference in the said order is called for. There is no merit in the present Original Application. Consequently, it deserves to be dismissed.

16. In view of the above discussion, the present Original Application is dismissed without any order as to costs.

MEMBER (J)

O.A.NO.465-2017(SB)-HDD-2017-transfer