

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 166 OF 2023

(Subject:- Transfer)

DISTRICT:-AURANGABAD

Sunil Ramdas Kharat,)
Age – 45 years, Occ. Police Service,)
Presently posted at Police Headquarters,)
Aurangabad.)
R/o Ghati, Jai-Bheem Nagar, Aurangabad.)
Mob:- 7350541541.) **APPLICANT**

V E R S U S

1. **The State of Maharashtra**)
Through the Secretary,)
Home Department,)
Mantralaya, Mumbai-400 032.)
2. **The Superintendent of Police,**)
Aurangabad, District Aurangabad.)
3. **The Special Inspector General of Police,**)
Aurangabad Range, Aurangabad.) **RESPONDENTS**

APPEARANCE : Shri Joslyn Menezes, learned counsel
holding for Smt. Amruta Paranjape-
Menezes, learned counsel for the
applicant.
: Shri D.M. Hange, learned Presenting
Officer for the respondent authorities.

CORAM : **Hon'ble Justice Shri V.K. Jadhav, Member (J)**

DATE : **01.04.2024.**

ORAL - ORDER

Heard Shri Joslyn Menezes, learned counsel holding for Smt. Amruta Paranjape Menezes, learned counsel for the applicant and Shri D.M. Hange, learned Presenting Officer for the respondent authorities finally with consent at admission stage.

2. By way of filing this Original Application, the applicant is assailing the order dated 22.02.2022 passed by the respondent No.2 transferring thereby the applicant from Local Crime Branch to Police Headquarter and also seeking declaration that his temporary period of deputation away from the place of posting is in contravention of the provisions of Section 22N of the Maharashtra Police Act.

3. Learned counsel for the applicants submits that the applicant had joined the police force on 18.10.1998 as Police Constable. In the year 2009, he was promoted as a Naik Police Constable. On 18.05.2014, the applicant came to be transferred to Anti-Terrorist Cell, Aurangabad. On 20.03.2017, by way of request transfer, the applicant came to be transferred to Local Crime Branch and in view of same, on

04.05.2017, the applicant was relieved from his earlier posting in order to resume his posting at Local Crime Branch, Aurangabad. However, the applicant was not allowed to join his duties in the Local Crime Branch, Aurangabad. On 06.05.2017, the then Superintendent of Police cancelled the earlier order of transfer dated 20.03.2017 and the applicant was reposted to his earlier place of posting i.e. Anti-Terrorist Cell, Aurangabad.

4. Learned counsel for the applicant submits that the said order came to be passed without complying the provisions of Section 22(N) of Maharashtra Police Act. There were no recommendations from the Police Establishment Board about his transfer as it was not constituted. Thus the applicant has challenged the said order by preferring the Original Application No. 844/2017 before this Tribunal. By order dated 17.07.2018, this Tribunal has allowed the said O.A. and quashed and set aside the impugned order of transfer and the applicant has been reposted to his earlier posting i.e. Local Crime Branch, Aurangabad.

5. Learned counsel for the applicant submits that in terms of order passed by this Tribunal as referred above, on

14.08.2018, the applicant was sent back to Local Crime Branch, Aurangabad. However, by order dated 16.08.2018, the then Superintendent of Police transferred the applicant and the other police personnel who had approached this Tribunal and their transfer orders were set aside by this Tribunal. The applicant came to be deputed at Lasur by order dated 16.08.2018. The applicant has not challenged the said order and he has completed his period of deputation at Lasur. By order dated 07.12.2018, the applicant was brought back to his original posting i.e. at Local Crime Branch, Aurangabad. The applicant thereafter was subjected to some departmental enquiry proceedings and by order dated 11.02.2020, the order was passed in the departmental enquiry and the punishment was inflicted on him about stoppage of two annual increments. Even thereafter, the applicant remained continued on his original posting at Local Crime Branch, Aurangabad.

6. Learned counsel for the applicant submits that by impugned order dated 22.02.2022, the applicant was deputed to Police Headquarter, Aurangabad until further orders. Learned counsel for the applicant submits that for the said transfer, which is apparently a mid-tenure transfer by way of

deputation, neither the Police Establishment Board was constituted nor the proposal has been submitted by the respondent No.2 to the Government as provided in the proviso of Section 22N of the Maharashtra Police Act. Learned counsel for the applicant submits that in the departmental enquiry he was already inflicted with the punishment of stoppage of two annual increments and as such, by way of his deputation to the Police Headquarter as a matter of punishment, is improper, incorrect and illegal. Learned counsel for the applicant submits that the impugned order is liable to be quashed and set aside.

7. Learned Presenting Officer has placed before this Tribunal and record and proceedings and fairly admitted that the respondent No.2 has not constituted the Police Establishment Board to consider the aspect of the transfer of the applicant on deputation to the Police Headquarter. Learned Presenting Officer submits that there are several complaints against the applicant and his work is also not satisfactory and accordingly, the respondent No.2 has transferred him. Learned Presenting Officer submits that beside that the applicant is a heart patient and recently undergone the bypass surgery. In view of same, he is not

suitable for the posting at Local Crime Branch due to health issues.

8. In this context Section 22N of the Maharashtra Police Act which is relevant for present discussion is reproduced herein below:-

“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) for Police Personnel of and above the rank of Deputy Superintendent of Police or Assistant Commissioner of Police a normal tenure shall be of two years at one place of posting;

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

(c) for Police Officers of the rank of Police Sub-Inspector, Assistant Police Inspector and Police Inspector a normal tenure shall be of two years at a Police Station or Branch, four years in a District and eight years in a Range, however, for the Local Crime Branch and Special Branch in a District and the Crime Branch and Special Branch in a Commissionerate, a normal tenure shall be of three years;

(d) for Police Officers of the rank of Police Sub-Inspector, Assistant Police Inspector and Police Inspector a normal tenure shall be of six years at Commissionerates other than Mumbai, and eight years at Mumbai Commissionerate;

(e) for Police Officers of the rank of Police Sub-Inspector, Assistant Police Inspector and Police Inspector in Specialized Agencies a normal tenure shall be of three years.

The Competent Authority for the general transfer shall be as follows, namely:-

Police Personnel

Competent Authority

- | | |
|---------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (a) Officers of the Indian Police Service | Chief Minister; |
| (b) Maharashtra Police Service Officers of and above the rank of Deputy Superintendent of Police. | Home Minister; |
| (c) Officers up to Police Inspector | (a) Police Establishment Board No.2;
(b) Police Establishment Boards at Range Level,
(c) Police Establishment Boards at Commissionerate Level
(d) Police Establishment Boards at District Level
(e) Police Establishment Boards at the Level of Specialized Agency]: |

Provided that, the State Government may transfer any Police Personnel prior to the completion of his normal tenure, if,-

- (a) disciplinary proceedings are instituted or contemplated against the Police personer; or
- (b) the Police Personnel is convicted by a court of law; or
- (c) there are allegations of corruption against the Police Personnel; or
- (d) the Police Personnel is otherwise in incapacitated from discharging his responsibility; or
- (e) the Police Personnel is guilty of dereliction of duty.

“(2) In addition to the grounds mentioned in sub-section (1), in exceptional cases, in public interest and on account of administrative exigencies, the Competent Authority shall make mid-term transfer of any Police Personnel of the Police Force.”

[Explanation.- For the purposes of this sub-section, the expression "Competent Authority" shall mean:-

- | Police Personnel | Competent Authority |
|--------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------|
| (a) Officers of the Indian Police Service | Chief Minister; |
| (b) Maharashtra Police Service Officers of and above the rank of Deputy Superintendent of Police. | Home Minister; |
| (c) Police Personnel up to the rank of Police Inspector for transfer out of the respective Range or Commissionerate or Specialized Agency. | Police Establishment Board No.2; |
| (d) Police Personnel up to the rank of Police Inspector for transfer within the respective Range, Commissionerate or Specialized Agency. | Police Establishment Boards at the Level of Range, Commissionerate or Specialized Agency, as the case may be; |
| (e) Police Personnel up to the rank of Police Inspector for transfer within the District. | Police Establishment Board at district Level: |

Provided that, in case of any serious complaint, irregularity, law and other problem the highest Competent Authority can make the transfer of any Police Personnel without any recommendation of the concerned Police Establishment Board.]

9. It is not disputed that normal tenure of post which the applicant is holding is five years and it appears that the applicant's transfer by way of his deputation is mid-tenure.

10. On careful perusal of the record and proceedings which is now placed before this Tribunal by learned Presenting Officer, it appears that the Police Establishment

Board has not been constituted. Further as per history pointed out by learned counsel for the applicant, which is recorded by way of his submission, on 20.03.2017, by way of request transfer, the applicant came to be transferred to Local Crime Branch, Aurangabad. However, the applicant was not allowed to join his duties in the Local Crime Branch, Aurangabad and on 06.05.2017, the then Superintendent of Police cancelled the earlier order and the applicant was reposted to his earlier place of posting i.e. Anti-Terrorist Cell, Aurangabad. The applicant had challenged the said order by filing the Original Application No. 844/2017 before this Tribunal. This Tribunal by order dated 17.07.2018 has allowed the said O.A.No. 844/2017 and quashed and set aside the order dated 06.05.2017. In terms of order passed by this Tribunal, on 14.08.2018, the applicant was sent back to Local Crime Branch. However, two days thereafter i.e. on 16.08.2018, the applicant again came to be deputed to some other place as on deputation. It is also the part of record that though the applicant was brought to the Local Crime Branch, within few days, he was moved again under pretexts of deputation by way of impugned order to Police Headquarter, Aurangabad.

11. Though the learned Presenting Officer has pointed out that the applicant has accepted that he is not suitable to work in the Local Crime Branch because of his health issues, however, if it is a mid-term and mid-tenure transfer, the respondent No.2 should have followed the provisions of Section 22-N of the Maharashtra Police Act and failing therein, the impugned order is unjust and liable to be quashed and set aside. It is well settled that shifting of the police employee, from one place to another place, even by way of deputation amounts to transfer and as such, the constitution of Police Establishment Board and recommendation thereof are necessary.

12. However, in the instant case, it appears that the respondent No.2 i.e. Superintendent of Police, Aurangabad has passed the order on his own without their being recommendation from the Police Establishment Board which is mandatory as per the verdict passed by the Hon'ble Apex Court long back and further, even if any complaints are received against the applicant, in terms of proviso of Section 22N of Maharashtra Police Act, though the mid-tenure transfer of such a Government employee is permissible, the

same should have been done by the respondent No.2 by submitting the appropriate proposal to the Government.

13. In view of above, the order passed by the respondent No.2, thereby transferring the applicant by way of deputation from Local Crime Branch to Police Headquarter is not sustainable and the same is liable to be quashed and set aside. Hence, the following order:-

ORDER

The Original Application No. 166/2023 is partly allowed in following terms:-

- (A) The order dated 22.02.2022 passed by respondent No.2, thereby transferring the applicant from Local Crime Branch to Police Headquarters, Aurangabad by way of deputation is hereby quashed and set aside.
- (B) In the circumstances, there shall be no order as to costs.
- (C) The Original Application is accordingly disposed of.

MEMBER (J)