

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 1121/2022(S.B.)

Manoj S/o Khushalrao Sawarkar,
Aged 48 years, Occ. Service,
R/o Dhamgaye Nagar, Plot No.66,
Opp. Nara Ghat, Jaripatka,
Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra
through its Additional Chief Secretary,
Home Department,
Mantralaya, Mumbai-32.
- 2) The Additional Director General of Police (Traffic),
(M.S.) Having its Office 6th Floor,
Moti Mahal, Near CCT Club,
Opp. Samrat Hotel, Churchgate,
Mumbai- 400020.
- 3) The Superintendent of Police,
Highway Police Regional Division,
Having its Office, Administrative
Building No.1, 3rd Floor,
Civil Lines, Nagpur.

Respondents

Shri S.P.Palshikar, Ld. counsel for the applicant.
Shri V.A.Kulkarni, Ld. P.O. for the respondents.

Coram:-Hon'ble Shri M.A.Lovekar, Member (J).
Dated: - 15th February 2023.

JUDGMENT

Judgment is reserved on 09th February 2023.

Judgment is pronounced on 15th February, 2023.

Heard Shri S.P.Palshikar, learned counsel for the applicant and Shri V.A.Kulkarni, learned P.O. for the Respondents.

2. By order dated 07.10.2019 (Annexure A-1) the applicant was deputed to work at Highway Police Centre, Patansawangi. By order dated 15.09.2022 (Annexure A-2) he was repatriated to his parent post at Khapa Police Station, Nagpur (Rural). This order dated 15.09.2022 is impugned on the grounds that it was passed before completion of tenure of 5 years, there was no compliance of circular dated 07.10.2016 and there was no compliance of Section 22J-4 of the Maharashtra Police Act.

3. Case set out by respondent no.3 in his reply is that the applicant could be repatriated to this parent post as per circular of Home department, Government of Maharashtra dated 01.07.2015 (Annexure R-3-8), preliminary inquiry was conducted as prescribed by circular dated 07.10.2016 before passing the impugned order which is founded on default said to have been committed by the applicant, and there was due compliance of Section 22J-4 of the Act.

4. So far as the first contention of the applicant is concerned, the respondent no.3 has relied on circular dated 01.07.2015 which *inter alia* states

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४. पोलीस दलातील कोणत्याही शाखा/युनिट मधील पोलीस शिपाई या पदावर एख्रद्या कर्मचा-याची पदस्थापना झाल्यानंतर, तो कर्मचारी पदस्थापनेच्या ठिकाणी सामान्यतः जास्तीत जास्त पाच वर्षे कालावधीपर्यंत राहू शकतो. तथापि प्रशासकीय कारणास्तव वा अन्य कारणास्तव संबंधित आस्थापना मंडळाच्या शिफारशी नुसार आणि सक्षम प्राधिका-यांच्या मान्यतेने संबंधित पोलीस शिपाई याची बदली सामान्य पदावधी पूर्ण होण्यापूर्वी देखील होवू शकते.

Thus, the first contention of the applicant regarding the impugned order being bad on account of the same having being passed before completion of tenure of 5 years, cannot be accepted.

5. The second contention of the applicant is founded on Circular dated 07.10.2016 issued by the Special Inspector General of Police. As per this Circular transfer of Police Personnel on the ground of default should be preceded by a preliminary inquiry. According to the applicant, no such inquiry was conducted in this case. This submission is not supported by record. Report dated 06.09.2022 (Annexure R-3-2) of preliminary inquiry conducted against the applicant in respect of default said to have been committed by him was forwarded to respondent no.3 by A.P.I., Highway Police Centre, Patansawangi. By communication dated 07.06.2022 the applicant was asked

to remain present before P.I. so that his statement could be recorded, and on the same day his statement (Annexure R-3-3) was recorded. Communications dated 03.06.2022 and 08.06.2022 (Annexures R-3-5 and R-3-6), respectively also show that in respect of alleged default of the applicant preliminary inquiry was conducted and thus, there was compliance of guidelines contained in Circular dated 07.10.2016.

6. The third contention of the applicant is that there was no compliance of Section 22J-4 of the Act. Said Section reads as under –

22J-4. Functions of Police Establishment Board at Levels of Specialized Agencies

The Police Establishment Board at the Levels of Specialized Agencies shall perform the following functions, namely:-

(a) The respective Board shall decide all transfers and postings of all Police Personnel to the rank of Police Inspector within the Specialized Agencies.

(b) The respective Board shall be authorised to make appropriate recommendations to the Police Establishment Board No.2, regarding the postings and transfers out of the Specialized Agency, of the Police Personnel to the rank of Police Inspector.

Explanation. - For the purposes of this section, the expression "Police Personnel" means a Police Personnel to the rank of Police Inspector.

As per Notification of Home Department, Government of Maharashtra dated 18.01.2016 (Annexure R-3-7) Police Establishment Board at Highway Traffic Level shall consist of the following persons-

- (1) Additional Director General of Police (Traffic) - Chairperson;**
- (2) Superintendent of Police (HQ) - Member;**
- (3) Superintendent of Police (Thane Range) - Member;**
- (4) Superintendent of Police (Pune Range) - Member.**

The applicant does not dispute that the Board in this case was duly constituted. Minutes of meeting of the Board are at Annexure R-3-4. So far as case of the applicant was concerned, the Board concluded as follows-

पोह १३२/मनोज खुशालराव सावरकर, यांनी स्वतःची ओळख लपवून म. पो.केंद्राचे प्रभारी अधिकारी यांच्या नावाचा वापर केला आहे. तसेच याबाबत वरिष्ठांना काहीही सांगितले नाही. त्यामुळे त्यांनी कर्तव्यामध्ये बेशिस्त बेजबाबदारपणे व गैरवर्तन केल्याचे दिसून येत असून त्यांच्या या कृत्यामुळे अशाप्रकारचे कृत्य पो. केंद्रातील इतर पोलीस अंमलदार यांचेकडून होण्याची शक्यता नाकारता येत नाही. यास्तव पोलीस अधीक्षक, महामार्ग पोलीस नागपूर परिक्षेत्र यांनी कळविल्यानुसार

त्यांना त्यांचे मुळ घटकात प्रत्यावर्तीत करण्यात येउन त्यांचा कसुरी अहवाल पोलीस अधीक्षक, नागपूर ग्रामीण यांना पाठविण्यात येईल.

The Board then took the decision as follows-

मुळ घटकात प्रत्यावर्तीत करण्याबाबत निर्णय घेण्यात आला.

It was submitted by Shri S.P.Palshikar, learned Advocate for the applicant that Police Establishment Board at Highway Traffic Level could not have on its own taken the final decision to send the applicant back to his parent post and the said Board was required to make a recommendation in that behalf to the Police Establishment Board no.2. This submission is fully supported by Section 22J-4 of the Act. On this sole ground the impugned order will have to be quashed and set aside.

The applicant has relied on the judgments dated 10.08.2022 (Annexure A-3) and 11.10.2022 (Annexure A-4) passed by this Tribunal. In these cases, on facts, the Tribunal concluded that there was no compliance of Circular dated 07.10.2016 and Section 22J-4 of the Act. In the instant case there is non-compliance of Section 22J-4 of the Act on account of which the impugned order cannot be sustained. Hence, the order.

ORDER

The O.A. is allowed in the following terms-

The impugned order dated 15.09.2022 (Annexure A-2) is quashed and set aside. The applicant shall be reverted back to the post held by him before the impugned order was passed – within 30 days from today.

No order as to costs.

(M.A.Lovekar)
Member (J)

Dated – 15/02/2023

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Raksha Shashikant Mankawde
Court Name : Court of Hon'ble Member (J) .
Judgment signed on : 15/02/2023.
and pronounced on