

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 935/2022 (S.B.)**

Vinayak S/o Kisan Patil,
Occ.c.Aged 51 years,
Occ: Service, R/o 280,
Police Quarter, Building No.4B/503,
in Front of Gittikhadan Police Station,
Katol Road, 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.
4. The Commissioner of Police,
Having its office 5th 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:- 21st June 2023.

With

ORIGINAL APPLICATION NO. 936/2022 (S.B.)

Vilas S/o Devnath Gawande,
Aged 43 years, Occ: Service,
R/o At present 20, Madhavnagar,
Gorewada, 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: - 21st June 2023.

JUDGMENT

Judgment is reserved on 13th June, 2023.

Judgment is pronounced on 21st June, 2023.

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

2. Common point involved in these O.As. is whether the impugned orders can be sustained in view of Section 22J-4(b) of the Maharashtra Police Act (hereinafter "the Act for short").

Facts of O.A. No.935/2022

By order dtd.16/03/2020 (Annex.A-1), the applicant was deputed from the establishment of Police Commissioner, Nagpur City to Highway Police. By order dt.08/09/2020 (Annex.A-2), he was relieved to join the post on deputation. By order dt.30/09/2020 (Annex.A-3) he was posted on deputation at Highway Police Center, Dongargaon. By order dt.01/06/2021 (Annex.A-4), he was posted at Highway Police, Ramtek, Distt. Nagpur (Rural). By separate orders dt.15/09/2022 (Annex.A-5 & Annex.A-6), which are impugned, he was repatriated to his parent department and relieved.

Facts of O.A. No.936/2022

By order dtd.31/01/2019 (Annex.A-1), the applicant was deputed to join Highway Traffic Police Center, Dongargaon, Distt. Gondia from Amgaon Police Station, Distt. Gondia. He was immediately relieved. He joined on the post of deputation on 02/02/2019. By order dt. 01/06/2021 (Annex.A-2), he was deputed on administrative ground to Highway Police Center, Patansavangi, Distt. Nagpur (Rural). By the impugned orders separately passed on 15/09/2022 (Annex.A-3 & Annex.A-4), he was repatriated to the parent department and relieved.

3. This is the second round of the proceedings. In the first round both these O.As. were allowed by common Judgment dated 11.10.2022 on two grounds-

- i) Non-compliance of Circular dated 07.10.2016 issued by the Special-Inspector General of Police; and
- ii) Non-compliance of Section 22J-4(b) of the Act.

For review of common Judgment dated 11.10.2022 the respondents filed Review Application Nos.11/2023 and 12/2023 principally on the ground that no opportunity was given to them to file reply and substantiate their contention that there was due compliance of Circular dated 07.10.2016 as well as Section 22J-4(b) of the Act. By common Judgment dated 20.04.2023 both the Review Applications were allowed so as to afford

opportunity to the respondents to file their reply and again context the proceedings.

4. In O.A.No.935/2022 reply of respondent no.3 is at pp.32 to 39. In O.A.No.936/2022 reply of respondent no.3 is at pp.30 to 37. Annexures R-1 and R-3 in O.A.No.935/2022 show that against the applicant default report was filed, P.I., Highway Police conducted preliminary inquiry and submitted report dated 02.08.2021. Annexures R-1 and R-3 in O.A.No.936/2022 show that default report was filed against the applicant, preliminary inquiry was conducted and report of Inquiry dated 30.07.2021 was submitted. In view of these factual aspects it becomes apparent that there was compliance of Circular dated 07.10.2016.

5. Now, it will have to be seen whether there was compliance of Section 22J-4(b) of the Act. It reads as under-

22 J-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 authorized 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 purpose of this section, the expression "Police Personnel" means a Police Personnel to the rank of Police Inspector."

6. Minutes of meeting of the Board dated 12.08.2022 are placed on record. Last column of these minutes shows that the Board took the decision on its own to repatriate the applicants to their parent posts, and directed the Disciplinary Authority to initiate departmental inquiry pursuant to the finding recorded against them in Preliminary Inquiry.

It was submitted by learned P.O. that there was due compliance of Section 22J-4(b) of the Act. This submission is tried to be substantiated by contending that the Board was duly constituted it discussed default reports against the applicants and directed the competent Authority to pass order of repatriation and further directed initiation of departmental inquiry.

7. Shri S.P.Palshikar, learned Advocate for the applicants, on the other hand, submitted that the Board could not have on its own taken the decision of repatriation of the applicants since Section 22J-4(b) of the Act mandates that such Board shall only 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 upto the rank of Police Inspector. This submission is fully supported by Section 22J-4(b) of the Act. It is not the case of the respondents that the concerned Board had recommended repatriation of the applicants to their parent post, to Police Establishment Board No.2. This flaw will render the impugned orders unsustainable. Identical view has been taken by this Tribunal in Judgment dated 15.02.2023 in O.A.No.1121/2022. Hence, the order.

ORDER

Both the Original Applications are allowed. The impugned orders dated 15/09/2022 Annexures A-5 & A-6 in O.A.No.935/2022 & Annexures A-3 & A-4 in O.A.No.936/2022 are quashed and set aside.

The applicants shall be reverted back to the posts held by them before the impugned orders were passed- within 30 days from today.

No order as to costs.

(M.A.Lovekar)
Member (J)

Dated – 21/06/2023
rsm.

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 : 21/06/2023.
and pronounced on