

**BEFORE THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI, BENCH AT AURANGABAD**

ORIGINAL APPLICATION NOS.843 & 844 OF 2017

DISTRICT : AUGANGABAD

ORIGINAL APPLICATION NO.843 OF 2017

Shri Deepesh Ramesh Nagzire.)
Age : 36 Yrs., Occu.: Police Service,)
Presently posted at Kannad Police Station,)
R/o. Kamgar Housing Society,)
Khokadpura, Aurangabad – 431 001.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Secretary, Home Dept.,)
Mantralaya, Mumbai 400 032.)
2. The Superintendent of Police.)
Aurangabad, Dist. : Aurangabad.)
3. The Inspector General of Police,)
Aurangabad Range, Aurangabad.)...**Respondents**

WITH

ORIGINAL APPLICATION NO.844 OF 2017

Shri Sunil Ramdas Kharat.)
Age : 40 Yrs, Occu.: Police Service,)
Presently posted at ATC, Aurangabad,)
R/o. Ghati, Jaibheem Nagar,)
Aurangabad – 431 001.)...**Applicant**

Versus

1. The State of Maharashtra & 2 Ors.)...**Respondents**

Mrs. Amruta Paranjape-Menezes, Advocate for both the Applicants.

Mrs. Deepali S. Deshpande, Presenting Officer for the Respondents.

CORAM : SHRI B.P. PATIL (MEMBER-J)

Closed on : 29.06.2018

Pronounced on : 17.07.2018

J U D G M E N T

1. The facts and issues in both the Original Applications are identical and similar, and therefore, both the O.As are decided by this common order.

2. Applicants have challenged the order dated 6th May, 2017 issued by Respondent No.2 by which their earlier transfer orders have been cancelled and they have been reposted to their earlier posting by filing the present O.As.

3. Applicant Deepesh Ramesh Nagzire (the Applicant in O.A.843/2017) has joined the Police service on 3rd December, 2003 as Police Constable and posted at Police Head Quarter. On 8th June, 2007, he was transferred to Pachod Police Station. On 24th August, 2011, he was promoted as Naik Police Constable. On 20th

June, 2013, he was transferred from Pachod Police Station to Kannad Police Station. On 27th March, 2017, he was transferred from Kannad Police Station to Local Crime Branch, Aurangabad at his request. Accordingly, he joined the said posting. On 6th May, 2017, the Respondent No.2 abruptly cancelled the earlier transfer order of the Applicant dated 27th March, 2017 within two months from the date of his earlier transfer order and reposted him at his earlier posting.

4. Applicant Mr. Sunil R. Kharat (the Applicant in O.A.844/2017) joined Police Force on 18th October, 1998 as Police Constable and posted at Police Station Paithan. On 1st February, 2009, he was promoted as Naik Police Constable. On 18th May, 2014, he was transferred to Anti-terrorist Cell, Aurangabad. On 20th March, 2017, he was transferred to LCB on his request. Accordingly, on 4th May, 2017, he was relieved from his earlier posting in order to resume his new posting at the LCB, Aurangabad. However, he was not allowed to join the new posting. On 6th May, 2017, abruptly, the Respondent No.2 cancelled his earlier transfer order dated 20th March, 2017 and reposted him at his earlier posting.

5. It is the contention of the Applicants that they have not completed their normal tenure of posting at a place and they were not due for transfer. Their impugned transfers are mid-term transfers and same have been made without following the provisions of Maharashtra Police Act. It is their contention that, Police Establishment Board at district level was not duly constituted as per the provisions of Maharashtra Police Act and no meeting of the District Police Establishment Board has been called

for and no resolution in the meeting of the Police Establishment Board has been passed for their transfer. It is their contention that the Respondent No.2 has issued the impugned order in the capacity as a Superintendent of Police and not as a Chairman of Police Establishment Board. It is their contention that, no exceptional circumstances have been recorded while making their transfers. There were no administrative exigencies or public interest in making their transfers. It is their contention that the Respondent No.2 has issued the order in the capacity of Superintendent of Police, and therefore, the order is in contravention of the provisions of Maharashtra Police Act as the Respondent No.2 – Superintendent of Police is not competent transferring authority. It is their contention that the Respondent No.2 has either cancelled or reversed at most 70% to 80% of transfer orders issued by her predecessor without recording the reasons. It is their contention that the said orders have been issued with a view to take vengeance against her predecessor in office at the cost of the victimization of the Police Personnel at constabulary level.

6. It is their contention that, while making their transfers, the Respondent No.2 has mentioned that 21 personnel working in the LCB were in excess of the sanctioned post. But immediately after the impugned transfer order, she had issued another order dated 31st May, 2017 transferring 8 Police Personnel from different Police Stations to LCB, and therefore, the impugned transfer order is malicious. It is their contention that their transfers are in violation of the provisions of Maharashtra Police Act, and therefore, they prayed to allow the O.As. and quash and set aside the

impugned order, by which their earlier transfer orders have been cancelled.

7. The Respondents filed their Affidavit-in-reply and resisted the contention of the Applicants. It is their contention that the impugned transfer orders have been issued by following the due procedure and provisions of Maharashtra Police Act. It is their contention that, previously, the transfers of the Applicants were made without obtaining sanction from Police Establishment Board, and therefore, the same were irregular orders. In the meeting of the Police Establishment Board held on 06.05.2017, the said issue was discussed and it was decided to cancel the earlier transfer orders of the Applicants, as those orders were illegal and accordingly, the impugned order has been issued and the Applicants are reposted at their previous posting. It is their contention that the impugned order has been issued in view of the provisions of Maharashtra Police Act and there is no violation of any provisions of the Maharashtra Police Act. It is their contention that the impugned orders are legal one, and therefore, they prayed to reject the O.A.

8. I have heard Mrs. Amruta Paranjape-Menezes, learned Advocate for the Applicants and Mrs. Deepali S. Deshpande, learned Presenting Officer for the Respondents. I have perused the documents produced by both the parties on record.

9. Admittedly, the Applicant in O.A.843/2017 (Deepesh R. Nagzire) joined the Police Force on 3rd December, 2003 as Police Constable and posted at Police Head Quarter. Thereafter, he was transferred to Pachod Police Station on 08.07.2007. On

24.08.2011, he was promoted as Police Naik and on 20.06.2013, he was transferred to Kannad Police Station. On 25th March, 2017, he was transferred to LCB, Aurangabad on his request and he joined the new posting accordingly and within two months of his earlier transfer, he came to be transferred from LCB, Aurangabad and he has been posted at his earlier posting by impugned order dated 6th May, 2017.

10. Applicant in O.A.844/2017 (Sunil R. Kharat) joined the Police Force on 18th October, 1998 as Police Constable and posted at Police Station Paithan. On 1st February, 2009, he was promoted as Naik Police Constable. On 18th May, 2014, he was transferred to Anti-terrorist Cell, Aurangabad. By order dated 20th March, 2017, he was transferred to LCB from Anti-terrorist Cell, Aurangabad at his request. On 4th May, 2017, he was relieved from Anti-terrorist Cell to join his new posting at LCB, Aurangabad, but he was not allowed to join the duties.

11. Admittedly, both the Applicants came to be transferred by impugned order dated 6th May, 2017 and reposted at their earlier posting and their earlier transfer orders have been cancelled.

12. Learned Advocate for the Applicant has submitted that, the transfers of both the Applicants are mid-term transfers. They have not completed their normal tenure of posting at their present place of posting i.e. Aurangabad. She has submitted that, in order to make the mid-transfer of Police Personnel, the Police Establishment Board at district level is the competent transferring authority in view of the provisions of Section 22-N(2) of

Maharashtra Police Act and such transfers can be made in exceptional circumstances, in public interest and on account of public exigencies. But no such reason arose for the transfers of the Applicants, and therefore, the impugned transfer order is illegal and in contravention of the provisions of Section 22-N(2) of Maharashtra Police Act.

13. Learned Advocate for the Applicants has further submitted that, no Police Establishment Board, as provided under Section 22 J-1 of Maharashtra Police Act has been constituted by Respondent No.2 for making the transfers of the Applicants and other Police Personnel. Not only this, but no meeting of such Board has been called and no decision of transferring the Applicants had been taken in the said meeting. Therefore, the impugned transfer order issued by Respondent No.2 in the capacity of Superintendent of Police is illegal as Superintendent of Police is not competent transferring authority for making transfers of the Applicants in view of the provisions of Maharashtra Police Act, and therefore, she prayed to quash and set aside the impugned transfer orders by allowing the O.A.

14. Learned Advocate for the Applicants has further submitted that the Respondent No.2 has issued the impugned order with a view to take vengeance against her predecessor in the office, and therefore, the Applicants and other personnel at constabulary level have been victimized. The impugned order has been issued within a short span of time after the earlier transfers of the Applicants and the said order is malicious and arbitrary, and therefore, the same requires to be quashed.

15. Learned Advocate for the Applicants has submitted that the Applicants have been transferred on the ground that, excess Police Personnel have been appointed in LCB against sanctioned posts and the said reason has been mentioned in the impugned order dated 06.05.2017. She has submitted that, immediately on 31.05.2017, the Respondent No.2 issued another order and posted 8 Police Personnel in LCB. She has submitted that the said order is at Page No.16 & 15 respectively in both the O.As. She has submitted that the very conduct of the Respondent No.2 shows that the Applicants have been victimized and the impugned order has been issued with malice, and therefore, she prayed to allow the O.A.

16. Learned P.O. has submitted that the issue regarding the irregularities committed by predecessor in the office of Respondent No.2 i.e. earlier Superintendent of Police (Rural), Aurangabad had been noticed by the Respondent No.2, and therefore, the said issue had been placed before the Police Establishment Board in the meeting held on 06.05.2017. After considering the said issue, the Police Establishment Board had decided to cancel the earlier transfer orders of Applicants and other Police Personnel and to repost them at their earlier posting. They have also noticed that, excess Police Personnel have been posted in the LCB against the sanctioned posts, and therefore, the Applicants have been transferred by the impugned order. She has submitted that the Police Establishment Board has been duly constituted by Respondent No.2 in view of the provisions of Section 22 J-1 of Maharashtra Police Act and the duly constituted Board has taken decision to transfer the Applicants, and accordingly, the Respondent No.2 issued the impugned order. She has submitted

that, there is no illegality in the impugned order, and therefore, she supported the impugned order and prayed to reject the O.A.

17. On perusal of the impugned order dated 06.05.2017, it reveals that the order has been issued, as the excess Police Personnel were posted in LCB against sanctioned posts, and accordingly, the previous transfer orders of the Applicants and other Police Personnel by which they have been posted in LCB, have been cancelled. There is no reference regarding the meeting of the Police Establishment Board as well as the decision taken therein in the impugned order. The impugned order is material, and therefore, I reproduce the same.

“ज.क्र. प्रलि/आस्था-१/वि.ब.आ.रद्द/२०१७/३६०९

औरंगाबाद दिनांक ०६/०५/२०१७

संदर्भ:- या कार्यालयाचे पत्र. क्रं. आस्था-१/वि.कर्म/नेमणूक /२०१७/३२५९
दि. २६.०४.२०१७, समक्रमांक १२३४३
दि. ३१.१२.२०१६, समक्रमांक २५६० दि. २७.०३.२०१७, समक्रमांक २९०
दि. ११.०१.२०१७, समक्रमांक १२३२६ दि. ३१.१२.२०१७, समक्रमांक २५५५
दि. २७.०३.२०१७, समक्रमांक २५६३ दि. २७.०३.२०१७, समक्रमांक २५५३
दि. २७.०३.२०१७, समक्रमांक १२३३१ दि. ३१.१२.२०१६, समक्रमांक
१२३२८
दि. ३१.१२.२०१६, सतक्रमांक १२३३२ दि. ३१.१२.२०१६.

विषय:- स्थागुशा येथील विनंती बदलीचे आदेश रद्द करण्यात येत असले बाबत

आदेश:-

उपरोक्त विषयान्वये कळविण्यांत येते की, संदर्भीय पत्रान्वये खालील (११) पोलीस कर्मचारी यांची स्थानिक गून्हे शाखा येथे त्यांच्या विनंती वरून बदली करण्यात आल्या होत्या परंतु स्थानिक गुन्हे शाखा येथे (२१) पदे मंजूर असल्याने आपले पद अतिरिक्त होत असल्याने सदर विनंती बदलीचे आदेश रद्द करण्यात येत आहे.

अ. क्र.	हुद्दा, ब. क्र. व नाव	पुर्वीची नेमणुक ठिकण	विनंती वरून बदली ठिकाण	शेरा
१	पोना/४१ एस. बी. पाटिल	करमाड	स्थागुशा	बदली रद्द करण्यात येत आहे.
२	पोना/५४१ एस.आर.खरात	एटीसी सेल	स्थागुशा	बदली रद्द करण्यात येत आहे.
३	पोना/९३४ पी.एन. खंडाळकर	पोमु	स्थागुशा	बदली रद्द करण्यात येत आहे.
४	पोना/११३८ एस.ए. ढवळे	चिकलठाणा	स्थागुशा	बदली रद्द करण्यात येत आहे.
५	पोह/५२८ डी.एस. जाधव	वाहतुक शाखा	स्थागुशा	बदली रद्द करण्यात येत आहे.
६	मपोना/१२२८ एस.एस.बाविस्कर	पोमु	स्थागुशा	बदली रद्द करण्यात येत आहे.
७	पोना/ १८९ डी.आर.नागझरे	कन्नड श.	स्थागुशा	बदली रद्द करण्यात येत आहे.
८	पेशि/४३३ वाय.एन.दारवटे	पोमु	स्थागुशा	बदली रद्द करण्यात येत आहे.
९	पेशि/१३२२ अनिल एल. चव्हाण	पोमु	स्थागुशा	बदली रद्द करण्यात येत आहे.

१०	पोहे/५५२ एस.डी.पटाण	मोपशा	स्थागुशा	बदली रद्द करण्यात येत आहे.
११	पोना/१४८ वाय.डी.निकम	पोमु	स्थागुशा	बदली रद्द करण्यात येत आहे.

सही/-
(डॉ. आरती सिंह)
पोलीस अधिदक्षक, औरंगाबाद ग्रा.”

18. It is material to note here that, this Tribunal directed the Respondents to make statement as to whether a separate order regarding constitution of Police Establishment Board as required under Section 22-J(1) of Maharashtra Police Act has been issued. In response to the said direction, the Respondent filed Affidavit and has specifically stated that, no separate order regarding the establishment of Police Establishment Board has been issued. But they reiterated the fact that, in the minutes of the meeting of the Police Establishment Board dated 06.05.2017, there is a mention regarding the constitution of the Board. The Respondents have produced the Office Note and the minutes of the meeting of Police Establishment Board dated 06.05.2017. On perusal of the same, it reveals that the transfers of the Police Personnel have been proposed on the ground that, no Police Establishment Board had been constituted earlier while making their transfers to LCB, Aurangabad and there was irregularity in their earlier transfers, and therefore, their earlier transfers have to be cancelled. Not only this, but the ground regarding the excess Police Personnel posted in LCB has also been mentioned therein. On going through the minutes of the meeting of the alleged Police Establishment Board held on 06.05.2017, it reveals that, there is a reference regarding the constitution of Police Establishment Board by the Respondent No.2. But no document is coming before this Tribunal regarding the establishment of Police Establishment Board under the Chairmanship of Respondent No.2 i.e. Superintendent of Police

(Rural), Aurangabad. There is nothing on record to show that the Board comprising of Respondent No.2 and other 2 Police Officers had been constituted by Respondent No.2 in view of the provisions of Section 22 J-1 of Maharashtra Police Act. The Respondents have admitted this fact in the Affidavit filed in response to the directions given by this Tribunal. From this, it is crystal clear that, no Police Establishment Board has been constituted for making transfers of the Police Personnel, as provided under Section 22 J-1 of the Maharashtra Police Act. Therefore, it creates doubt regarding the minutes of the meeting and the record produced in that regard. The Respondents have contended that there was illegality in the earlier transfer orders of the Applicants and other Police Personnel made by the predecessor of the Respondent No.2. But without rectifying the said mistake or irregularity, the Respondent No.2 again committed the similar mistake. Therefore, the impugned order issued by Respondent No.2 without establishing the Police Establishment Board as provided under Section 22 J-1 is not legal one.

19. Had it been a fact that the Respondent No.2 had really constituted the Police Establishment Board as provided under Section 22 J-1 of the Act, and the meeting of the Board was really held on 06.05.2018 before effecting transfer of the Applicant and decision was taken in that regard in that meeting, then definitely, the said decision would have referred and mentioned in the impugned transfer orders dated 06.05.2018. But the fact is different. There is no mention or reference regarding the decision of Police Establishment Board in the meeting dated 06.05.2018 in the impugned order. Therefore, it creates suspicion about contentions of the Respondents in that regard.

20. The impugned transfer orders of the Applicants are made within a short span of their tenure and before completion of their normal tenure of posting at Aurangabad. The impugned transfers are mid-term transfers. No doubt, in view of the provisions of Section 22-N(2), the competent authority is empowered to make transfers of the Police Personnel in exceptional circumstances, in the public interest and on account of administrative exigencies by recording reasons. But no such case has been made out by the Respondents while making transfers of the Applicants in the midst of the term by cancelling the earlier transfer orders.

21. The impugned order has been issued by the Respondents on the ground that only 21 posts are sanctioned at LCB and the Applicants and other employees were excess Police Personnel in LCB, Aurangabad, and therefore, the Applicants and others have been transferred from LCB. But the record shows that on 31.05.2017, the Respondent No.2 again issued another order and transferred 8 other Police Personnel in LCB. Had it been a fact that the Applicants and other Police Personnel have been transferred from LCB on the ground that, they are posted there in excess to the sanctioned posts, then definitely there is no need to post another 8 Police Personnel in LCB immediately by order dated 31.05.2017. But the fact is different. The Respondent No.2 immediately after the transfers of the Applicants and others posted 8 other Police Personnel in LCB. This shows malice on the part of Respondents. The Respondent No.2 issued the impugned order to take vengeance against her predecessor and victimized the Applicants and cancelled their earlier transfer orders within a short span of time.

22. On considering the above said facts and circumstances, it is crystal clear that the Respondent No.2 issued the impugned order without following the provisions of Maharashtra Police Act. The impugned order is in contravention of Section 22-N of the Act. It is not issued by the competent authority as provided under Section 22-N(2) of the Act. The Respondent No.2 acted maliciously and arbitrarily while issuing the impugned order, and therefore, the impugned order, by which earlier transfer orders of the Applicants have been cancelled and they have been reposted to their earlier posting, is not legal, and therefore, it requires to be quashed and set aside by allowing both the O.As.

23. In view of the above said discussion, the Original Applications are allowed. The impugned order dated 06.05.2017 by which earlier transfer orders of the Applicants have been cancelled and they are reposted at their earlier posting are hereby quashed and set aside. The Respondent No.2 is directed to repost the Applicants at their earlier posting immediately. No order as to costs.

Sd/-

(B.P. Patil)
Member-J
17.07.2018

Mumbai
Date : 17.07.2018
Dictation taken by :
S.K. Wamanse.