

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 37 OF 2023

DISTRICT : DHULE

Ravindra Prakash Bantode,)
Age : 47 years, Occu. : Service as)
Reserved Police Inspector,)
R/o C/o Superintendent of Police,)
Dhule.)

...APPLICANT

VERSUS

- 1) The State of Maharashtra,)
Through the Additional Chief)
Secretary, Home Department,)
2nd floor, Main Building,)
Mantralaya, Hutatma Rajguru Chowk,)
Mumbai-32.)
- 2) The Director General of Police,)
Mumbai, Shahid Bhagatsing Marg,)
Culaba, Mumbai – 400 001.)
- 3) Special Inspector General of Police,)
Nashik Region, Gadkari Chowk,)
Nashik – 422 002.)
- 4) The Superintendent of Police,)
Dhule, Sakri Road, Dhule.)
- 5) The Principal,)
Police Training School, Dhule.)

...RESPONDENTS

APPEARANCE : Shri K.B. Jadhav, learned Counsel for
Applicant.

: Shri I.S. Thorat, Presenting Officer for
respondent authorities.

CORAM : **JUSTICE P.R. BORA, VICE CHAIRMAN.**
DATE : **27.04.2023**

ORAL ORDER:

1. Heard Shri K.B. Jadhav, learned counsel for the applicant and Shri I.S. Thorat, learned Presenting Officer for the respondent authorities.
2. The applicant has filed the present Original Application seeking quashment of the order dated 9.1.2023 issued by respondent no. 2, whereby the applicant has been transferred from the office of respondent no. 4 to the office of respondent no. 5, both at Dhule.
3. It is the case of the applicant that he has been illegally and without following the prescribed procedure has been transferred from his existing post though he has not completed the ordinary tenure on the said post. The applicant was posted at Dhule in the office of the Superintendent of Police after he was promoted to the post of Reserved Police Inspector. The applicant has alleged that on the basis of some false complaints he has been transferred without considering the merit of the complaints so received against the applicant. It is the

contention of the applicant that the complainants on whose complaints the applicant has been transferred are the habitual complainants and known for making false complaints. It is the further contention of the applicant that till today he has received 115 rewards and his A.C.Rs. have always remained noteworthy. According to the applicant, this fact is sufficient to negate the contentions raised against the applicant in the so called complaints filed against him. In the circumstances, the applicant has prayed for setting aside the impugned order and to restore him at his original place.

4. The contentions raised and the prayers made in the O.A. are resisted by the respondents. Respondent nos. 2 to 4 have filed their joint affidavit in reply and opposed the contentions raised in the application. In the detailed reply filed by these respondents they have elaborately mentioned the circumstances which led to effecting the transfer of the applicant vide the impugned order. It is contended that having regard to the consistent complaints against the applicant, some of which are of serious nature, the enquiry was conducted and since prima-facie substance is found in the complaints received against the applicant it has been resolved to transfer the applicant from the existing post. It is further contended that the Police

Establishment Board-2, which is the competent body, has recommended the transfer of the applicant having regard to the complaints received against the applicant. Along with reply, the respondents have placed all the relevant documents on record. The minutes of the meeting of the Police Establishment Board-2, copies of complaints received against the applicant and the recommendation made by the Officers seeking transfer of the applicant from the existing post are annexed. For all above reasons the respondents have prayed for dismissal of the application.

5. I have duly considered the submissions advanced on behalf of the applicant, as well as, the respondents. I have also perused the documents filed on record. Perusal of the impugned order reveals that the applicant has been transferred vide the impugned order by invoking the provisions under section 22N(2) of the Maharashtra Police Act, 1951. Section 22N(2) reads thus:-

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

(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:-

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

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.]”

6. Now it has to be seen whether the grounds as are mentioned in section 22-N(2) of the Maharashtra Police Act 1951 existed against the applicant. From the documents filed on record it has substantially come on record that there were complaints received against the applicant and some of the complaints were from the female Police Officers as about indecent behavior of the applicant. Though the learned counsel

for the applicant has sought to contend and brought to my notice some of the documents filed on record by the applicant to canvass that the complaints against the applicant were false and concocted, I am not convinced with the submissions so made. In the preliminary enquiry conducted in regard to the allegations against the applicant, the Enquiry Officer has noticed substance. The Superintendent of Police, Dhule has also recommended for transfer of the applicant and lastly the Police Establishment Board, which is competent body to take decision, has also recommended the transfer of the applicant from his existing post after having considered the material against the applicant. Having considered the entire said material it does not appear to me that the transfer of the applicant has been ordered without any reason or without following any procedure of law.

7. The learned counsel for the applicant has relied upon the judgment in the case of **Somesh Tiwari Vs. Union of India and others, (2009) 2 SCC 592** to support his contentions. There cannot be any dispute about the ratio laid down in the aforesaid judgment. However, the ratio laid down in the said judgment may not apply to the facts of the present case. In the case of **Somesh Tiwari vs. Union of India and others** (cited supra) the

order of transfer was passed on the material which was non-existent and that was the reason the Hon'ble Supreme Court observed that the order impugned in the said petition has been passed by the authorities without application of mind and further that it suffers from malice in law. In the present matter there were consistent complaints against the applicant and some of which are of serious nature. The enquiry has been conducted in the said complaints and since prima-facie substance is found in the complaints so received that the applicant has been transferred from the existing post. It is thus evident that the facts in the present matter are quite distinguishable with the facts which existed in the case of **Somesh Tiwari vs. Union of India and others** (cited supra).

8. The learned counsel for the applicant has also relief upon the judgment delivered by this Tribunal in **O.A. Nos. 689 to 693 of 2020 with O.A. No. 5 of 2021 (Shri Ajay Mahadev Kharade & Ors. vs. the State of Maharashtra & Ors.)** on 6.8.2021. The facts of the said cases are also quite distinguishable. In the said matters the Tribunal has recorded an unambiguous finding that no substance was found in the complaint made by Shri Sagar Suryawanshi and despite of that said complaint was used for transfer of the applicant. As observed by the Tribunal, the

transfer was thus made on non-existent ground, which amounts to malice and punishment for non-existent default. In the present matter I reiterate that in the enquiry conducted against the applicant substance is found in the complaints received against the applicant.

9. One more judgment has been relied upon by the learned counsel in **O.A. No. 812/2022 (Shri Nitin Vasantao Dahibhate Vs. the state of Maharashtra & Ors.)** decided at principal Bench of this Tribunal at Mumbai on 28.11.2022. In the aforesaid matter also the facts are quite different. In the said matter as noticed by the Tribunal in the file notings there was absolutely no whisper for any complaints against the applicant therein, but the transfer was made on the basis of the complaints against the said applicant. In the circumstances, the transfer of the said applicant was set aside by the Tribunal. It is quite evident that since the facts in the present case are different, said judgment also may not of any help to the applicant in the present case.

10. After having considered the entire facts and circumstances in the present case it does not appear to me that any case is made out by the applicant for setting aside the impugned order.

I, therefore, see no reason to cause any interference in the said order. In the result, the following order is passed :-

ORDER

Original Application stands dismissed without any order as to costs.

VICE CHAIRMAN

PLACE : **Aurangabad.**
DATE : **27.4.2023.**

ARJ O.A.NO.37-2023 (TRANSFER)