

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 463 OF 2017
(Subject – Transfer)**

DISTRICT: AURANGABAD

Shri Raosaheb S/o Babaji Awhad,)
Age: 43 years, Occu. : Service,)
(as Naik Police Constable,)
Police Head Quarter, A'bad),)
R/o Tapadia Pride,)
Oppo. Mahanubhav Police Chowki,)
Beed By-pass, Dist. Aurangabad.)

.. **APPLICANT**

V E R S U S

- 1) **The State of Maharashtra,**)
Through its Secretary,)
Home Department, M.S.,)
Mantralaya, Mumbai- 32.)
- 2) **The Superintendent of Police,**)
Aurangabad (Rural),)
Dist. Aurangabad.)

.. **RESPONDENTS**

APPEARANCE : Shri A.S. Deshmukh, learned Advocate for the
Applicant.

: Shri S.K. Shirse, learned Presenting Officer for
the Respondents.

CORAM : HON'BLE SHRI B.P. PATIL, MEMBER (J).

DATE : 21.03.2018.

O R D E R

1. The applicant has challenged the order dated 07.06.2017 issued by the respondent No. 2 transferring him from Pachod Police Station to the Police Head Quarter, Aurangabad Rural by filing the present Original Application.

2. The applicant was initially appointed as a Police Constable in April 1997 in Police/Home Department. Thereafter he was designated as Naik Police Constable (NPC) in the year 2009 and since then, he is working on the same post. In the year 2014 he was working at Gangapur Police Station on 23.07.2014 he was transferred to Pachod by the respondent No. 2. He was relieved from Gangapur Police Station on 29.07.2014 and thereafter, he joined Pachod Police Station on 30.07.2014. Since then, he is serving there. He had not completed his normal tenure of posting i.e. 5 years at Pachod Police Station and he was not due for transfer. But the respondent No. 2 had issued impugned order dated 07.06.2017 and thereby transferred him from Pachod Police Station to Police Headquarter Aurangabad. It is his contention that the said transfer is mid-term and mid-tenure transfer and it is illegal. It is his contention that the respondent No. 2 had not considered the provisions of Section 22N (1) and (2) of the Maharashtra Police Act, while making his transfer. No special reasons or administrative exigency arose for his transfer. No reasons have been recorded by the respondent No. 2 while making his transfer. The impugned transfer order has been issued on the ground of maintaining law and order situation, but the respondent No. 2 has no authority to transfer him on that ground and the said authority vested with the highest transferring authority as provided under Maharashtra Police Act.

It is his contention that the impugned order is void ab-initio, illogical, irrational, arbitrary, and high handed and not in view of the provisions of Section 22N (1) and (2) of the Maharashtra Police Act. Therefore, he has challenged the said transfer order by filing the present Original Application.

3. The respondent No. 1 has resisted the contention of the applicant by filing her affidavit in reply. It is her contention that the Director General of Police, Mumbai received serious complaints against the applicant and the same were forwarded to her office. The complaints were enquired in to and after verifying the facts in the complaints, the same found to be true and therefore, her office prepared an office note taking quick action against the applicant. On the basis of office note, a meeting of Police Establishment Board was called on 05.06.2017 and the said issue was discussed before it. The Police Establishment Board decided to transfer the applicant from Police Station Pachod to Police Headquarter Aurangabad Rural and accordingly, the impugned order has been issued. It is her contention that there is no illegality in the impugned order and therefore, she prayed to reject the present Original Application.

4. The respondent No. 2 has resisted the contention of the applicant by filing his affidavit in reply. It is his contention that there were serious complaints against the applicant and

there were confidential reports that there is a possibility of creation of law and order situation and therefore, they transferred him in view of the provisions of Section 22J(1) and (2) of the Maharashtra Police Act. There was no mala-fide intention on their part in making transfer of the applicant and impugned transfer order is legal and valid. It is his contention that as per amendment of 2015 the respondent No. 2 has power to transfer the applicant under the provisions of Rule 22N(1) and (2) of the Maharashtra Police Act, which empowers the respondent No. 2 to make transfer of the police personnel in exceptional cases, in public interest and on account of administrative exigency. It is his further contention that the competent authority has power to effect mid-term and mid-tenure transfer of the police personnel in view of Gazette published on 16.02.2015 and accordingly, the statutory requirements have been complied by the respondent No. 2 while effecting the transfer of the applicant. It is his contention that the Sub Section 2 of Section 22N empowers the competent authority i.e. Superintendent of Police at District level to make mid-term and mid-tenure transfer of the Police personnel of the Police force and there is letter of Director General of Police to that effect.

5. It is further contention of the respondents that the transfer of the applicant was recommended by the Police

Establishment Board, considering the serious complaint against the applicant so as to avoid law and order situation which was imminent and therefore, on the recommendation of the District Establishment Board, the applicant has been transferred. It is his contention that the impugned order is legal one. Therefore, he prayed to reject the present Original Application.

6. I have heard Shri A.S. Deshmukh, learned Advocate for the applicant and Shri S.K. Shirse, learned Presenting Officer for the respondents. I have perused the documents on record by both the parties.

7. Admittedly, the applicant was initially appointed in Police/Home Department as a Police Constable in April-1997. Thereafter, he was designated as Naik Police Constable in the year 2009 and since then, he is working on the said post. Admittedly in the year 2014, the applicant was working at Gangapur Police Station. At his request he has been transferred to Pachod Police Station by order dated 29.07.2014 and accordingly, he has been relieved from Gangapur Police Station on 29.07.2014. On 30.07.2014, he joined his post at Pachod Police Station and since then, he was serving there till the impugned order was issued. Admittedly, the applicant has not completed his normal tenure of 5 years as provided under the Maharashtra Police Act. He has completed only 2 years and 10 months on his post at Pachod.

Admittedly, the applicant has been transferred to Police Headquarter, Aurangabad from Pachod Police Station by impugned order dated 07.06.2017 on administrative ground and to maintain law and order situation.

8. Learned Advocate for the applicant has submitted that the applicant was transferred and posted at Pachod Police Station by order dated 23.07.2014 and accordingly, he has joined his posting at Pachod Police Station on 30.07.2014. He has submitted that the applicant has not completed his normal tenure of posting i.e. 5 years at Pachod Police Station. He has submitted that the applicant has hardly completed 2 years and 10 months at Pachod Police Station, but he has been transferred by the impugned order dated 07.06.2017 and posted at Police Headquarter, Aurangabad. He has submitted that the impugner order is against the provisions of Section 22N (1) and (2) of the Maharashtra Police Act. He has submitted that in the transfer order dated 07.06.2017 it has been mentioned that the transfer of the applicant made on administrative ground, as well as, to maintain law and order situation and it is General transfer. He has submitted that the said transfer is in violation of the provisions of Sub Section 1 and 2 of Section 22N of the Maharashtra Police Act. He has submitted that the proviso to Sub Section 1 of Section 22N empowers the State Government to transfer any police

personnel prior to the completion of his normal tenure for the circumstances mentioned in clause (a) to (e). He has submitted that the impugned order has not been issued by the State Government. Therefore, the said provision is not attracted in the instance case and the transfer of the applicant cannot be said to be made under provisions of proviso to Sub Section (1) of Section 22N of the Maharashtra Police Act.

9. Learned Advocate for the applicant has submitted that Sub Section (2) of the Section 22N provides that the Competent Authority as defined in the said Section can make mid-term transfer of any Police Personnel in exceptional cases, in public interest and on account of administrative exigencies. He has submitted that no exceptional case has been made out by the respondent No. 2 while making transfer of the applicant and there is no administrative exigencies in making the transfer of the applicant. Not only this, but the said transfer order has not been made in public interest and therefore, it is illegal. He has submitted that the impugned order is illegal and in violation of the Section 22N (1) and (2) and therefore, it requires to be quashed and set aside.

10. Learned Advocate for the applicant has further submitted that the impugned order has been made by the respondent No. 2 i.e. the Superintendent of Police, Aurangabad

Rural, on the ground of serious complaints and law and order problem. But the respondent No. 2 or the Police Establishment Board at District Level is not the Competent Authority to make transfer of Police Personnel on such grounds of serious complaint and law and order problem. The Highest Competent Authority i.e. the Chief Minister is the only Competent Authority to make such transfer on the ground of serious complaint and law and order problem in view of provisions of proviso to Sub Section (2) of Section 22N of the Maharashtra Police Act. He has submitted that the Police Establishment Board at District Level is the competent authority to make mid-term transfer of the police personnel in exceptional cases, in public interest and on account of administrative exigencies only in view of the provisions of Section 22N(2) of the Maharashtra Police Act. But the respondent No. 2 and Police Establishment Board made transfer of the applicant on the ground of serious complaint and law and order problem without authority and therefore, it is illegal. He therefore, prayed to quash the impugned order by allowing the present Original Application.

11. Learned Presenting Officer has submitted that the impugned order has been issued by the respondents by following due provisions of law. He has submitted that the several complaints have been received against the applicant to the

respondent No. 2. The allegations in the complaints were of serious nature, therefore, there was law and order problem. Therefore, the applicant has been transferred by the Police Establishment Board at District Level as per the decision taken in its meeting. He has submitted that on the basis of the decision taken by the Police Establishment Board, the respondent No. 2 has issued the impugned order of transfer. He has submitted that there is no illegality in issuing the impugned order and the impugned order has been issued in view of the provisions of Section 22N (2) of the Maharashtra Police Act. He therefore, supported the impugned order.

12. The respondents have produced the documents in respect of the transfer of the applicant on record. On perusal of the documents, it reveals that the office of respondent No. 1 put an office note before the respondent No. 2 proposing to transfer 4 police personnel including the applicant. It has been mentioned in the said office note that the complaints were received against the applicant and he was supporting to the illegal activities and therefore, his transfer was proposed. Initially in the office note/proposal it has been mentioned that the respondent No. 2 is the Supreme/Highest competent authority and the respondent No. 2 is empowered to make transfer. On the basis of office note,

the respondent No. 2 has passed the order on 07.06.2017 transferring the applicant. The said office note is as follows :-

परिच्छेद क.	कार्यालयीन टिपणी टिपणी वआदेश विषय :- विनंती व तक्रारी अर्जाच्या बदली बाबत.....	संदर्भ / शेरा
9	मा.पो.अ. सादर महाराष्ट्र पोलीस अधिनियम, १९५१ मधील कलम २२ न (२) नुसार, गृह विभाग यांचे सन २०१५ चा महाराष्ट्र अध्यादेश क्र. २ दि. २६.०२.२०१५ व तसेच पोलीस महासंचालक महाराष्ट्र राज्य मुंबई यांचे पत्र क्र. पोमसं/३/अधिसुचना/१४/ २०१४ /७३ दि. २५.०२.२०१५ मधील ठळक मुद्दे मधील ६.३ अन्वये “कोणतही गंभीर तक्रार, अनियमितता, कायदा व सुव्यवस्थेच्या प्रश्नाच्या बाबतीत, सर्वोच्च सक्षम प्राधिकरण, संबधीत पोलीस आस्थापना मंडळाच्या कोणत्याही शिफारशीशिवाय, कोणत्याही पोलीस कर्मचा-यांची बदली करू शकेल” त्या अनुषंगाने सर्वोच्च सक्षम प्राधिकारी म्हणजे पोलीस अधिक्षक व पोलीस कर्मचारी यांचे नियुक्ती आधिकारी पोलीस अधिक्षक यांना प्राप्त आधिकारानुसार वरील कलमान्वये वरील कारणामुळे बदली करू शकतात.	
२	खालील नमुद पोलीस कर्मचारी यांच्या विनंती व तक्रारी अर्ज प्राप्त झाली आहे. १.पोना/५९१ रफीक ताहेर शेख, नेम.पो.मु. औरंगाबाद ग्रा. यांचा विनंती अर्ज अवलोकनार्थ सादर आहे. उपरोक्त अर्जान्वये पोना/५९१ रफीक ताहेर शेख, नेम.पो.मु. औरंगाबाद ग्रा. यांनी विनंती करून सीसीटीएनएस येथे बदली मिळणेस विनंती केलेली आहे. २. पोना/११३१ रवि उत्तमराव लोखंडे, नेम.पो.मु. औरंगाबाद यांचा विनंती अर्ज अवलोकनार्थ सादर आहे. पोना/११३१ रवि उत्तमराव लोखंडे, नेम.पो.मु. औरंगाबाद ग्रा. यांनी सायबर सेल येथे विनंती वरून बदली मिळणेस विनंती केलेली आहे. ३. तर सायबर सेल येथील पोना/२७८ संतोष शंकरराव तांदळे यांचा सामान्य पदावधी एकुण कालावधी खंडीत व अखंडीत कार्यकाळ पुर्ण झालेला आहे. ४. पोना/६२५ आर.बी. आढाड यांच्या विरुद्ध निनावी अवैध धंदयास पाठबळ दिल्या बाबातचा अर्ज व गोपनीय तक्रारी आलेल्या आहेत.	
३	परिच्छेद क्रं. १ मधील महाराष्ट्र पोलीस अधिनियम, १९५१ मधील कलम २२-न (२) नुसार, गृह विभाग यांचे सन २०१५ चा महाराष्ट्र अध्यादेश क्र. २ दि. २६.०२.२०१५ व तसेच पोलीस महासंचालक महाराष्ट्र राज्य मुंबई यांचे पत्र क्रं. पोमसं/३/अधिसुचना/१४/२०१४/७३ दि. २५.०२.२०१५ नुसार प्राप्त आधिकारानुसार सर्वोच्च सक्षम प्राधिकरण व नियुक्ती अधिकारी नुसार प्राप्त आधिकारान्वये परिच्छेद क्रं. २ मधील पोलीस कर्मचारी यांची त्यांनी बदलीस विनंती केलेप्रमाणे व तक्रारीवरून प्रशासकीय तसेच कायदा व सुव्यवस्थेच्या दृष्टीकोनातून विचार करून बदली करण्या बाबत पुढील योग्य ते आदेशार्थ सादर,	
४	पोलीस अधिक्षक : क. १ यांची CCTNS येथे, क. २ यांची शिवुर, क. ३ यांची cyber cell व क. ५ यांची निनावी तक्रार अर्जाच्या गोपनीय चौकशी वरून वरील आधिकारानुसार HQ येथे बदली करण्यात येत आहे. स्वाक्षरी /- पो. अ. ५/६	

13. Thereafter another office note/proposal has been prepared by the office of respondent No. 2 wherein it has been mentioned that the complaints has been received against the applicant and powers to transfer of the applicant are vested to the Police Establishment Board at District Level. It was proposed note to constitute Police Establishment Board under the Chairmanship of the respondent No. 2. As per the remarks entered against the column no. 4 of the said note, it reveals that the transfer of the applicant has been made as there was truth in the complaint filed against the applicant and it was made with the consent of all. Thereafter, the respondent No. 2 has passed the order against column No. 7 and transferred the applicant. The said order is as follows :-

“७.पोलीस अधीक्षक : **PN 591, PN 278, PN 1131, PN 625**
 ↓ ↓ ↓ ↓
CCTNS शिवुर cyber cell HQ
 यांची असे बदली करण्यात येत आहे.
 स्वाक्षरी /-
 पो. अ. ७/६ ”

14. The respondents have also produced on record a copy of minutes of the meeting of the Police Establishment Board at District Level wherein it has been mentioned that the transfer of the applicant and others have been made as per their request and complaints received against them from public servant. The said minutes of the meeting does not bear date on which it was held. It does not disclose where and at what time the meeting was held

and what was discussed in the meeting. Not only this, but no date has been put by the respondent No. 2 and other Members of the Police Establishment Board at District Level below their signatures. Therefore, it is difficult to rely/accept the contentions of the respondents that the meeting of the Police Establishment Board had been held prior to issuance of the impugned transfer order. The above said documents show that the respondent No. 2 had already determined and decided to transfer the applicant on the basis of office note dated 05.06.2017, before placing the matter before the Police Establishment Board assuming that he is the highest or the Supreme Competent Transferring Authority and the powers to transfer the police personnel at District Level including the applicant were vested with him. But in fact, no such powers were vested with the respondent No. 2 to make mid-term or mid-tenure transfer in view of the provisions of Section 22N (1) and (2) of the Maharashtra Police Act.

15. On perusal of papers produced by the respondents, it reveals that on 05.06.2017 two office notes had been prepared by the office of respondent No. 2 proposing the transfer of the applicant and others. First office note mentions that the powers to transfer the Police Personnel on the grounds mentioned therein were vested with the respondent No. 2 i.e. the Superintendent of Police as he being Highest/Supreme Competent Authority while

the another office note states that the powers of mid-term transfer of the police personnel at District Level are vested with the Police Establishment Board and proposal to constitute the board was put forth in it. It shows that the respondent No. 2 as well its office were not sure as to who is the Competent Authority to make transfer of Police Personnel. Therefore, two different office notes might have been prepared.

16. The documents on record show that the respondent No. 2 had decided to transfer the applicant and others and made endorsement on both the office notes. It shows that the respondent No. 2 had made up his mind and determined to transfer the applicant and others and thereafter, the record showing that the matter has been placed before the Police Establishment Board had been prepared. In fact, there is nothing on the record to show that the Police Establishment Board at District Level had been constituted as per the office note dated 05.06.2017 for making mid-term transfer of the applicant and others and the meeting of the said board has been called and the issue regarding transfer of the applicant and others had been discussed and thereafter conscious decision has been taken in the meeting. Therefore, it is difficult to accept the documents produced by the respondents in that regard. On the contrary, it creates suspicious as to whether the respondents followed the due

procedure as provided under Section 22N (1) and (2) of the Maharashtra Police Act before passing the impugned transfer order.

17. It is material to note here that as per the contention raised by the respondents, the transfer of the applicant is made on the complaint received against him. They have contended that the impugned order has been made under the provisions of Section 22N (2) of the Maharashtra Police Act by the Competent Authority for the circumstances mentioned therein, but as discussed above, the impugned order has not been passed by the Competent Authority i.e. Police Establishment Board at District Level. There is nothing on the record to show that the said transfer is made in exceptional case, in the public interest and on account of administrative exigency. No such ground or circumstances has been placed before the Police Establishment Board or before this Tribunal. Therefore, it cannot be said that the impugned order is made by following provisions of Section 22N (2) of the Maharashtra Police Act.

18. No doubt, the Competent Authority as mentioned in the Section 22N (2) of the Maharashtra Police Act is empowered to make transfer of any police personnel in the exceptional cases, in public interest and on administrative exigency by recording reasons. But in the instant case, no such ground has been

established by the respondents while making transfer of the applicant and others. On the contrary, the above said documents create doubt about constitution of Police Establishment Board, its meeting and decision taken by it. The documents on record show that the respondent No. 2 had determined to transfer the applicant and she decided to make transfer of the applicant by making order on the first office note assuming that she is empowered to make such transfer and thereafter, documents have been prepared to justify decision taken by her. These facts show that the respondent No. 2 acted mala-fide and made transfer of the applicant without following provisions of Section 22N (2) of the Maharashtra Police Act in proper perspective. Therefore, the impugned order is not sustainable in the eye of law.

19. It is also material to note that on going through the affidavit in reply filed by the respondents, it reveals that the respondents are not sure as to who is the competent authority to make transfer of the applicant. At one place the respondent No. 1 contended that the respondent No. 2 is the Supreme/Highest Competent Authority for transfer and is empowered to make transfer of the applicant and accordingly, transfer order has been issued. But in the next breath, it has contended that the Police Establishment Board at District Level is the Competent Authority to make transfer of the applicant. Because of the confusion, two

separate office note might have been prepared by the office of respondent No. 2 and accordingly, the respondent No. 2 had passed orders thereon.

20. It is also material to make clear here that the competent authority i.e. the Police Establishment Board has every power to make mid-term and mid-tenure transfer of the police personnel in exceptional cases, in public interest and on account of administrative exigency by following due process of law. The Police Establishment Board at District Level ought to have followed due process of law to effect the transfer of the applicant, if really there are complaints of serious nature against the applicant. It is open to the Competent Authority to make transfer of the applicant on that ground following due process of law, but no such process of law has been followed by the respondent No. 2 while issuing the transfer order under challenge. Therefore, the impugned order requires to be quashed and set aside.

21. The respondents have come with a case that they made transfer of the applicant on the ground of serious complaint and law and order problem. But in view of the provisions of Sub Section (2) to Section 22N of the Maharashtra Police Act, the Police Establishment Board at District Level is empowered to make mid-term transfer of Police Personnel in exceptional cases, in public interest and on account of administrative exigencies.

The Higher Competent Authority i.e. the Hon'ble Chief Minister can make transfer of any Police Personnel with recommendation of Police Establishment Board in case of serious complaint, irregularity, law and order problem in view of provisions of proviso to Sub-Section (2) of Section 22N of the Maharashtra Police Act. But the respondent No. 2 or the Police Establishment Board at District Level made the transfer of the applicant on the ground of serious complaint and law and order problem without authority and therefore, the impugned order is illegal.

22. In view of the above discussions in foregoing paragraphs, the impugned order is not legal one and it is in violation of the provisions of Section 22N (2) of the Maharashtra Police Act and therefore, it requires to be quashed and set aside.

23. Consequently, the O.A. deserves to be allowed. Accordingly, the O.A. is allowed. The impugned order dated 07.06.2017 issued by the respondent No. 2 from Pachod Police Station to the Police Head Quarter, Aurangabad Rural is hereby quashed and set aside. The respondent No. 2 is directed to issue proper order regarding reposting the applicant at his earlier posting. There shall be no order as to costs.

(B.P. PATIL)
MEMBER (J)

PLACE : AURANGABAD.

DATE : 21.03.2018.

KPB S.B. O.A. No. 463 of 2017 BPP 2018 Transfer