

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD****O.A. NO. 669/2016 WITH O.A. NO. 670/2016****1. ORIGINAL APPLICATION NO. 669/2016****DISTRICT: JALGAON****Shri Chandrakant Sitaram Shinde,**

Age: 51 years, Occu. : Service

(As Police Naik, Economic Crime Cell, Jalgaon)

R/o Shri Ram Nagar, Om Sai Apts.,

4th Floor, Flat No. 10, Near Dudawadi,

Mandir, Jalgaon.

.. 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,**
Jalgaon.

.. RESPONDENTS**W I T H****2. ORIGINAL APPLICATION NO. 670/2016****DISTRICT: JALGAON****Shri Dineshsing S/o Lotu Patil,**

Age: 48 years, Occu. : Service

(As Police Head Constable, Police

Headquarter, Jalgaon),

R/o 'Narmadai', JDCC Bank Director

Bungalow No. 17, Near SMIT College, Jalgaon. ..

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,**
Jalgaon.

.. RESPONDENTS

APPEARANCE : Shri A.S. Deshmukh, learned Advocate
for the Applicants in both the O.As.

: S/Shri N.U. Yadav & I.S. Thorat, Respondents
in respective O.As.

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

C O M M O N O R D E R

(Delivered on this 3rd day of July, 2017.)

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

2. The applicants have challenged the transfer order dated 25.05.2016, by which they have been transferred from Local Crime Branch, Jalgaon to the Police Headquarter, Jalgaon/Economic Crime Cell, Jalgaon and sought direction to respondents to allow them to join at Local Crime Branch, Jalgaon.

3. The applicant in O.A. No. 669/2016 namely Shri Chandrakant Sitaram Shinde, entered in the service of Jalgaon District Police Force as a Police Constable in the month of June, 1991. In the year 2012, he was promoted and designated as Naik Police Constable and since then, he is working on the said

post. On 30.05.2015, he was transferred from the District Special Branch (DSB), Jalgaon to the Local Crime Branch (LCB), Jalgaon.

4. The applicant in O.A. No. 670/2016, namely Shri Dineshsing Lotu Patil, was selected as Police Constable on the establishment of Jalgaon District Police Force in the month of January, 1991. In the year 2009, he was designated as Naik Police Constable. In the year 2011, he was promoted as Police Head Constable and since then he is working in the said cadre. On 15.05.2015, he was transferred from the District Special Branch (DSB), Jalgaon to Local Crime Branch (LCB), Jalgaon.

5. Both the applicants are working in the Local Crime Branch (LCB), Jalgaon up to November, 2015. They have hardly completed 7 months' tenure on their post in Local Crime Branch (LCB), Jalgaon. They were not due for transfer in view of the provisions of Section 22N (1)(B) of the Maharashtra Police Act 1951. In spite of that, on 27.11.2015, the Spl. IGP, Nashik issued transfer order transferring them from Local Crime Branch (LCB), Jalgaon to Police Head Quarter, Jalgaon. In pursuance of said order, the respondent no. 2 i.e. the Superintendent of Police, Jalgaon, issued transfer order and relieved them. The said transfer was mid-tenure and mid-term transfer and in

contravention of provisions of Section 22N (1) & (2) of the Maharashtra Police Act, 1951 and therefore, those were not maintainable and legal. The Spl. IGP, Nashik and respondent no. 2, were not empowered to effect the mid-term and/or mid-tenure transfer orders of the applicants. The said orders were not issued by the highest competent authority. Therefore, the orders were *void ab initio*. But the applicants have not raised grievance about the said orders. They were relieved from Local Crime Branch (LCB), Jalgaon and then they joined at Police Head Quarter, Jalgaon in the year 2015.

6. Other Police Personnel viz. Mr. S.M. Patil, Mr. S.R. Ambhore, Mr. D.N. Shirsath and Mr. R.R. Patil, who had also been transferred by the said orders, had approached this Tribunal by filing O.A. Nos. 84, 85, 112 & 113 all of 2016 assailing the said orders. During the pendency of the O.As., on 11.04.2016 the Special Inspector General of Police, Nashik, was pleased to issue communication to the respondent no. 2 conveying that the transfer order dated 27.11.2015 issued by him was cancelled. On 13.04.2016, those O.As. were disposed of in view of the said communication, with a direction to the respondents therein to allow the applicants in those matters to join back on their previous posts under the Local Crime Branch (LCB), Jalgaon

within one week therefrom. Since the order dated 27.11.2015 was cancelled by the Special Inspector General of Police, Nashik, it was obligatory on the part of the respondent no. 2 to issue direction to relieve the applicants from Police Head Quarter, Jalgaon or allow them to join back on their previous posts under Local Crime Branch (LCB), Jalgaon, but no steps were taken by the respondent no. 2 in that regard. Therefore, they have submitted request applications to respondent no. 2 on 3.5.2016 with a request to repost them in Local Crime Branch, Jalgaon, in view of the cancellation of the order dated 27.11.2015, by the Special Inspector General of Police, Nashik vide order dated 11.04.2016. But the respondent no. 2 had not taken appropriate steps. It is their contention that those employees, who approached this Tribunal, were reposted on their previous posts within one week as directed by this Tribunal.

7. It is the contention of the applicants that they joined Local Crime Branch, Jalgaon in May 2015 and since then they are working there till December, 2015. They are not due for transfer in the month of May 2016, but the respondent no. 2 issued impugned transfer order on 25.05.2016, transferring the applicant in O.A. No. 669/2016 to Economic Crime Cell, Jalgaon and retaining the applicant in O.A. No. 670/2017 at Police Head

Quarter, Jalgaon. It is their contention that in fact, the respondent no. 2 ought to have relieved them from Police Head Quarter and reposted them in the Local Crime Branch, Jalgaon in view of the cancellation of the earlier order dated 27.11.2015 passed by the Special Inspector General Of Police, Nashik vide order dated 11.04.2016. Instead of that, he passed the impugned order. It amounts that the applicants have been transferred from Local Crime Branch, Jalgaon to Police Head Quarter, Jalgaon. It is their contention that the impugned orders are *void ab initio* and illegal *per se* in view of the provisions of Section 22N (1) & (2) of the Maharashtra Police Act, 1951. It is their contention that the respondent no. 2 has no authority to make mid-term and/or mid-tenure transfers in view of the provisions of Section 22N (1) & (2) of the Maharashtra Police Act, 1951 and therefore, they have filed present Original Applications to quash and set aside the impugned order dated 25.05.2016 issued by the Respondent No. 2.

8. The respondent no. 2 has filed affidavit in reply and resisted the contention of the applicants. It is admitted by the respondent no. 2 that the applicants were entered in the service as Police Constable in the Jalgaon District Police Force in the year 1991. They have admitted the fact that the applicants were promoted in

due course. They have also admitted the fact that prior to transfer of the applicants to District Special Branch (DSB), Jalgaon, they were working in the said cadre. They have admitted the fact that on 30.05.2015 and 15.05.2015 the applicants in O.A. Nos. 669/2016 and 670/2016, have been transferred from the District Special Branch (D.S.B.), Jalgaon to Local Crime Branch (L.C.B.), Jalgaon.

9. They have admitted the fact that on 27.11.2015, the Special Inspector General of Police, Nashik, passed the order transferring the applicants and other 10 persons from Local Crime Branch (LCB), Jalgaon to Police Head Quarter, Jalgaon and in pursuance of the said order, the respondent no. 2 had issued the transfer order dated 1.12.2015. They have admitted that accordingly, the applicants joined their duties at Police Headquarter, Jalgaon. They have denied that the said orders were illegal and in contraventions of the provisions of the provisions of Section 22N (1) & (2) of the Maharashtra Police Act, 1951. They have contended that the applicants have not challenged the said orders, which were passed by the Police Establishment Board at District level, Jalgaon. It is their contention that the respondent no. 2 had issued orders of transfers on the basis of the decision taken by the Police Establishment Board at District Level, Jalgaon

and therefore, there was no illegality in the said orders. They have admitted the fact that the Special Inspector General of Police, Nashik has canceled the transfer order dated 27.11.2015 on 11.04.2016. It is their contention that the Special Inspector General of Police, Nashik had issued confidential letter to the respondents on 13.04.2016 informing him about serious complaints against the applicants and directed them to do needful by considering the serious nature of complaints mentioned in the letter. The Police Establishment Board, Jalgaon heard the applicants and other employees, they had given opportunities to the applicants and thereafter, decided to transfer the applicants and accordingly, decision had been taken in the meeting. On the basis of said decision and recommendation of Police Establishment Board, the respondent no. 2 issued transfer order of the applicants on 25.05.2016. It is their contention that the impugned transfer order was issued in view of the provisions of provisions of Section 22N (1) & (2) of the Maharashtra Police Act, 1951 and there is no illegality in the impugned transfer orders. Therefore, they prayed to reject the present Original Applications.

10. Heard Shri A.S. Deshmukh, learned Advocate for the applicants in both the O.As. and S/Shri N.U. Yadav & I.S. Thorat, learned Presenting Officers for respective respondents in

respective O.As. I have perused the affidavit, affidavit in reply, citations, Rules and various documents placed on record by the respective parties.

11. Admittedly, the applicants entered service in the Jalgaon District Police Force as Police Constable in the year 1991. The applicant in O.A. No. 669/2016 was designated as Naik Police Constable in the year 2012 and since then, he is working on the said post. Admittedly, the applicant in O.A. No. 670/2016 was designated as Naik Police Constable in the year 2009 and in the year 2011 he was promoted to the cadre of Police Head Constable and since, then he is working in the said cadre. Admittedly, the applicants were transferred to Local Crime Branch (LCB), Jalgaon from the District Special Branch (DSB), Jalgaon in the month of May 2015. It is not much disputed that on 27.11.2015, the Special Inspector General of Police, Nashik issued transfer order of applicants and on the basis of said order, the respondent no. 2 i.e. the Superintendent of Police, Jalgaon issued order dated 1.12.2015 and thereby transferred and posted them at Police Head Quarter, Jalgaon. Admittedly, some of the other police personnel namely Mr. S.M. Patil, Mr. S.R. Ambhore, Mr. D.N. Shirsath and Mr. R.R. Patil, who had also been transferred under the said order, had challenged the said order by filing O.A. Nos.

84, 85, 112 & 113 all of 2016 before this Tribunal. During the pendency of those O.As. the Special Inspector General of Police, Nashik, issued communication dated 11.04.2016 to the respondent no. 2 and conveyed that the transfer orders dated 27.11.2015 issued by him was cancelled. Thereafter, the O.As. came to be disposed of on 13.04.2016, with a direction to the respondents to allow the applicants in those matters to join on the previous posts. Admittedly, the present applicants have filed representation on 3.5.2016 with the respondent no. 2 with a request to post them at Local Crime Branch (LCB), Jalgaon and permit them to join back in Local Crime Branch (LCB), Jalgaon in view of the decision of this Tribunal in O.A. Nos. 84, 85, 112 & 113 all of 2016 filed by the S.M. Patil & Ors. But the respondent no. 2 had not decided the said representations, and on 25.05.2016 issued impugned order of transfer, by which the applicant in O.A. No. 669/2016 namely Shri Chandrakant Sitaram Shinde, was transferred to Economic Crime Cell, Jalgaon, while the applicant in O.A. No. 670/2016 namely Shri Dinsehsingh Lotu Patil, has been retained at Police Head Quarter, Jalgaon.

12. Learned Advocate for the applicants has submitted that the respondent no. 2 ought to have reposted the applicants in Local

Crime Branch (LCB), Jalgaon, since the Special Inspector General of Police, Nashik by communication dated 11.04.2015 cancelled his earlier order dated 27.11.2015, by which they were posted at Police Head Quarter, Jalgaon. He has submitted that the applicants made representation to the respondent no. 2 on 3.5.2015 in that regard, but the respondent no. 2 without considering the said representation, issued the transfer order dated 25.05.2016. He has argued that the applicants were not due for transfer, as they had not completed their tenure on the posts and therefore, the impugned order is not legal one. He has submitted that the impugned order is in contravention of the provisions of the Section 22N (1) & 22N (2) of the Maharashtra Police Act, 1951. He has submitted that as it is a mid-tenure transfer, the respondent no. 2 or Police Establishment Board has no authority to transfer them and the transfer has to be issued by the State Government only, on the grounds specified in the proviso to Section 22N (1) of the Maharashtra Police Act, 1951. He has further argued that even it is presumed that transfer of the applicant was made on the grounds mentioned in Section 22N (1) of the Maharashtra Police Act, 1951 then in that case also the Police Establishment Board is not competent authority and highest competent transferring authority is the competent authority to make their transfers. He has submitted that if their

transfers were made in view of the provisions of Section 22N (2) of the Maharashtra Police Act, 1951, in that case the Minister of department or the Chief Minister is the competent authority. But the impugned order is not issued by them and it was issued by the respondent no. 2 on the basis of recommendation of Police Establishment Board. Therefore, it is not legal. He has placed reliance on the judgment delivered by this Tribunal in O.A. No. 177/2015 in case of Rameshwar Mohanrao Gade Vs. The State of Maharashtra and Review Petition No. 06/2015 in the said O.A. and submitted that the provisions of Section 22N of the Maharashtra Police Act, 1951 has been considered by this Tribunal in detail. He has submitted that the impugned order is in contravention of the provisions of Section 22N of the Maharashtra Police Act, 1951 and therefore, the same is not legal and not maintainable. Therefore, he has prayed to allow the present O.As.

13. Learned Presenting Officers have submitted that the impugned order has been issued by the respondent no. 2 on the basis of recommendation made by the Police Establishment Board as provided under Section 22N (2) of the Maharashtra Police Act, 1951. He has submitted that the Superintendent of Police, Jalgaon i.e. respondent no. 2 has received confidential letter from

the Special Inspector General of Police, Nashik, wherein there were serious complaints regarding misconduct of the applicants and others and it was directed to place the matter before the Police Establishment Board for consideration of the transfers of the applicants. He has submitted that the enquiry report and letters had also been placed before the Police Establishment Board, Jalgaon, which has been duly constituted and after considering the grievances and allegations, nature of complaints, hearing the applicants as well as other police personnel against whom complaints were filed, the Police Establishment Board made recommendation to transfer the applicants and on the basis of said recommendation, the respondent no. 2 issued impugned transfer order. He has submitted that the said recommendation was made on the administrative ground as there was administrative exigencies and it was in the public interest. Therefore, the said order is legal in view of the provisions of Section 22N (2) of the Maharashtra Police Act, 1951.

14. He has submitted that the confidential letter dated 13.04.2016 sent by the Special Inspector General of Police, Nashik to the respondent no. 2 shows that the applicants had completed one tenure of posting in the Local Crime Branch (LCB), Jalgaon, but they managed to get posting in the said Branch

again. They had not undergone DTS Training, which was required to work in the Local Crime Branch. There were complaints against the applicant Shri Chandrakant Sitaram Shinde, alleging that he has pressurized department by using external pressure. It has been mentioned in the said letter dated 13.04.2016 that the enquiry against the applicant Shri Dineshsingh Lotu Patil, has been conducted by the Anti-Corruption Burro (ACB). Reference was made to the circular No. [पोमसं/३/१०/६/गुशा-विशा/नेमणुक/४०८/२०१४](#), दि. १६/१०/२०१४ issued by the Inspector General of Police regarding guidelines for appointment of police personnel in the Local Crime Branch. He has argued that considering all these facts, the Police Establishment Board recommended for transfers of the applicants and other 10 police personnel, who were earlier transferred from Local Crime Branch (LCB), Jalgaon to Police Head Quarter. He has further submitted that the other police personnels, who had filed the earlier O.As., have also been transferred by the said impugned order on the basis of the letter issued by the Special Inspector General of Police, Nashik on 13.04.2016, but they have not challenged the impugned order. He has argued that the impugned order was issued in view of the provision of Maharashtra Police Act, 1951 and therefore, he supported the impugned order of transfer.

15. Learned Presenting Officers have placed reliance on the judgment of this Tribunal in O.A. No. 323/2015 in case of Shri Sanjay Gulabrao Deshmukh Vs. The State of Maharashtra & Ors. and decision of the Hon'ble High Court of Bombay, Bench at Aurangabad in the W.P. No. 1277/2016 in the case of Sanjay Gulabrao Deshmukh Vs. The State of Maharashtra & Ors. in which the decision of this Tribunal in O.A. No. 323/2015 has been challenged before the Hon'ble Bombay High Court, Bench at Aurangabad.

16. Learned Advocate for the applicants has submitted that the impugned order issued by the respondent no. 2 on the basis of recommendation of the Police Establishment Board, Nahsik is *per se* illegal, as no notification establishing the Police Establishment Board at District Level has been issued in view of the provisions of Section 22J (1) of the Maharashtra Police Act, 1951.

17. Learned Presenting Officers have submitted that the notification was issued by the Government of Maharashtra and it is published in the Government Gazette on 2.12.2015 and therefore, it cannot be said that the impugned order is illegal. In support of submission, he has placed on record a copy of the

notification published in Government Gazette dated 2.12.2015 in that regard.

18. In view of the above said fact, I have to deal with the contentions of the applicants. So far as the submission of the learned Advocate for the applicants that no notification in the official gazette has been issued by the Government in view of the provisions of Section 22J (1) of the Maharashtra Police Act, 1951 constituting Police Establishment Board at District Level and therefore, the impugned order is illegal. On perusal of the notification dated 2.12.2015 published by the Government of Maharashtra in the Official Gazette, which has been placed on record by the respondents it reveals that in pursuance of the provisions of the Maharashtra Police (Amendment) Act, 2015 the Government had constituted the Establishment Board at District Level, consisting of the Superintendent of Police, Senior-most Additional Superintendent of Police & Deputy Superintendent of Police (Head Quarter). The Superintendent of Police was the Chairperson of the said board. In view of the said fact, it can be said that the Police Establishment Board has been constituted by the Government of Maharashtra in view of the provisions of Section 22J (1) of the Maharashtra Police Act, 1951 by publishing notification in the official gazette. Therefore, the impugned order

issued by the respondent no. 2 on the basis of recommendation of the Police Establishment Board, Nashik cannot be said to be illegal. Therefore, I do not find substance in the submissions advanced by the learned Advocate for the applicants in that regard.

19. Now I have to consider whether the impugned order is in view of the provisions of Section 22N of the Maharashtra Police Act 1951. The normal tenure of the Police Personnel and the officers had been mentioned in the Section 22N (1) of the Maharashtra Police Act 1951. The transfers of two types i.e. 'General Transfer' and 'mid-term transfer'. 'General transfer' has been defined under section 2(6A) and 'mid-term transfer' has been defined under Section 2 (6B) of the Maharashtra Police Act, 1951.

20. Section 22N (1) of the Maharashtra Police Act 1951 provides for the competent authority for transfer of the Police Personnel. Proviso to Section 22N (1) of the Maharashtra Police Act 1951 provides that the State Government may transfer any Police Personnel prior to completion of his normal tenure on the ground mentioned therein in clause (a) to (e).

21. In view of the provisions of Sub Section (2) of Section 22N of the Maharashtra Police Act 1951 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 to the Sub-section (2) provides the “Competent Authority” for making transfer of the Police Personnels in view of sub-section 2 of Section 22N of the Maharashtra Police Act, 1951. Proviso to Sub-section (2) of Section 22(N) of the Maharashtra Police Act, 1951 provides that in case of any serious complaint, irregularity, law and order problem, the highest Competent Authority can make the transfer of any Police Personnel without any recommendation of the concerned Police Establishment Board.

22. Keeping in mind above said provision, I have to consider whether the impugned transfer orders of the applicants were in contravention of the provisions of Section 22N (1) & 22N (2) of the Maharashtra Police Act 1951. Admittedly, the impugned transfer order is not general transfer order. The applicants have not completed their tenure of posting. On perusal of the letter dated 13.04.2016 issued by the Special Inspector General of Police, Nashik, shows that he received complaints regarding postings of the applicants and others and their misconduct. Therefore, he made enquiry in the matter and found substance in the allegations and complaints made against the applicants and

others. He noted that the applicants and others, who were posted in the Local Crime Branch, though they were not eligible to work in that branch as they had not undergone D.T.S. training. He found that the applicants completed their one tenure of posting in the said branch, but they again got posting in the Local Crime Branch, Jalgaon. It has been mentioned in the said letter that the Anti-Corruption Bureau had conducted secret enquiry about the allegations made against the applicant Shri Dineshsingh Lotu Patil. It discloses that the applicant Shri Chandrakant Sitaram Shinde was punished for external influence used by him for his transfer. Therefore, the Special Inspector General of Police, Nasik directed respondent no. 2 to place their matters before the Police Establishment Board, Nashik for transfers.

23. The minutes of the meeting of the Police Establishment Board, Nashik which is at paper book page nos. 82 to 84 (both inclusive) shows that the said letter has been placed before the Board. They had considered the contents therein. They called the applicants and others and gave them hearing and after considering all these facts, they decided to transfer the applicants and others on administrative ground, on account of the administrative exigency and in the public interest. The respondent no. 2 on the recommendation of the Police

Establishment Board, Nashik issued impugned transfer order dated 25.05.2016. Admittedly, it is not a general transfer and mid-term transfer. The Police Establishment Board, Nashik has recommended for transfer of the applicants in view of the provisions of Section 22N (2) of the Maharashtra Police Act 1951. In view of explanation to Sub-section (2) of Section 22N of the Maharashtra Police Act, 1951 the Police Establishment Board at District Level is competent authority for the transfer of Police Personnel up to the rank of Police Inspector. Therefore, in my opinion, the impugned order is proper, correct and legal.

24. The Police Establishment Board, Nashik, in the public interest and on administrative exigency recommended the transfer of the applicants, as they were not eligible to work in the Local Crime Branch as they had not completed D.T.S. training. The applicants have completed one tenure of posting in the Local Crime Branch. There were serious allegations about their misconduct against them. Keeping in mind, the said allegations and the enquiry conducted therein, the Police Establishment Board recommended transfers of the applicants. In my view, the impugned order squarely falls under the provisions of Section 22N (2) of the Maharashtra Police Act 1951. Therefore, I do not find substance in the submissions advanced by the learned Advocate

for the applicants that the Police Establishment Board is not competent authority to recommend the said transfer and the highest competent authority i.e. the concerned Minister of Government of Maharashtra or Chief Minister is the competent authority to issue transfer order in such cases in view of the provisions of proviso of Section 22N (2) of the Maharashtra Police Act 1951. On the contrary, the order is in view of the provisions of Section 22N (2) of the Maharashtra Police Act 1951 and therefore, it has been issued by the respondent no. 2 on the recommendation of the Police Establishment Board, Nashik and therefore, in my opinion there is no illegality in the order under challenge.

25. I have gone through the decision cited by the learned Advocate for the applicants and the learned Presenting Officers. The facts in O.A. No. 177/2015 and Review No. 07/2015 are not identical with the facts in the present matter and therefore, the said judgments are not much useful to the applicants in the present cases. On the contrary, the decision of this Tribunal in the O.A. No. 323/2016 as well as W.P. No. 1277/2016 is squarely applicable in the instant cases.

26. In view of the above said discussions the impugned orders are legal and proper. Hence, no interference is called in the impugned orders. There is no merit in the present O.As. Hence, the same deserve to be dismissed.

27. In view of the above circumstance, O.A. No. 669/2016 & 670/2016 are dismissed with no order as to costs.

(B.P. PATIL)
MEMBER (J)

KPB/S.B. O.A. Nos. 669 & 670 OF 2016 BPP 2017 Transfer