

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 464 OF 2017
(Subject – Transfer)**

DISTRICT: AURANGABAD

Shri Rajendra S/o Dhannu Kirtikar,)
Age: 52 years, Occu. : Service,)
(as Police Head Constable,)
Soygaon P.S.), R/o : Plot No. 133,)
Dhanashree Colony, Bldg. No. D/4,)
Behind Harsool, 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 M.P. Gude, 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 09.06.2017 issued by the respondent No. 2 transferring him from Bidkin to Soygaon by filing the present Original Application.

2. The applicant was appointed as Police Constable in Police/Home Department in August 1989. He was promoted as Police Head Constable before 8 years. In the year 2016, he was transferred to Bidkin by the respondent No. 2 in pursuant to the request made by him. Accordingly, he was relieved from Chikalthana Police Station on 20.06.2016. He joined Bidkin Police Station on 24.06.2016 and since 24.06.2016, he is working there as Police Head Constable. He has not completed his normal tenure of posting at Bidkin. But all of a sudden, he has been transferred from Bidkin and posted at Soygaon by impugned order of transfer dated 09.06.2017 issued by the respondent No. 2. It is his contention that the he has hardly completed 11 months of his posting at Bidkin and he is not due for transfer. His transfer is against the provisions of Section 22N (1) and (2) of the Maharashtra Police Act. The impugned transfer order is mid-term and mid-tenure transfer. It is his contention that the impugned transfer order has been issued on the administrative ground to maintain law and order situation. No special circumstances or reasons have been mentioned as required under Section 22N of the Maharashtra Police Act while making his transfer. The respondents had not considered the provisions of Section 22N (1) and (2) of the Maharashtra Police Act properly and therefore, the impugned order came to be issued. Therefore, he

prayed to quash and set aside the impugned order by allowing the present Original Application.

3. The respondent No. 2 has filed his affidavit in reply resisted the contention of the applicant. It is his contention that the applicant has been transferred in view of the provisions of Section 22N (1) and (2) of the Maharashtra Police Act read with Section 22J (1) and (2) of the Maharashtra Police Act. It is contended by the respondent that there were serious complaints against the applicant and there were confidential reports against him stating that there is a possibility of creation of law and order situation. Therefore, his transfer was made as per the decision taken in the meeting of the Police Establishment Board at District Level. There is no mala-fide intention in the transfer of the applicant. It is made in view of the provisions of Section 22N (2) of the Maharashtra Police Act. It is contended by the respondents that since, there were serious complaints against the applicant, the Police Establishment Board recommended the transfer of the applicant to maintain law and order situation. Statutory requirements had been complied with by the respondents and there is no illegality in the impugned transfer order. It is his contention that the Sub section 2 of Section 22N empowers the competent authority i.e. the Superintendent of Police at District Level to make mid-term/mid-tenure transfer of the police

personnel of the police force and there is a letter of Director General of Police giving such authority to the Superintendent of Police. Accordingly, on the recommendation of the Police Establishment Board at District Level, the respondent No. 2 has issued impugned order of transfer. There is no illegality in the impugned order of transfer. Therefore, the respondent has justified the same and prayed to reject the present Original Application.

4. I have heard Shri A.S. Deshmukh, learned Advocate for the applicant and Shri M.P. Gude, learned Presenting Officer for the respondents. I have perused the documents placed on record by both the parties.

5. Admittedly, the applicant was initially appointed as Police Constable in the Police Department in the month of August 1989. He was promoted in the cadre of Police Head Constable before 8 years. By the order dated 07.06.2016 he has been transferred to Bidkin from Chikalthana Police Station by the respondent No. 2. Accordingly, he was relieved from Chikalthana Police Station on 20.06.2016. He joined Bidkin Police Station on 24.06.2016 and since 24.06.2016, he is working there as Police Head Constable. There is no dispute about the fact that the applicant has not completed his normal tenure of posting i.e. 5 years at Bidkin Police Station and he is not due for transfer. He

has hardly completed 11 months at Bidkin Police Station. Admittedly, the impugned order is mid-term and mid-tenure transfer order.

6. Learned Advocate for the applicant has submitted that the impugned order issued by the respondent No. 2 is against the provision of Section 22N (1) and (2). He has submitted that the State Government is the competent authority to transfer the Police personnel prior to completion of his normal tenure on the grounds mentioned in clause (a) to (e) of Sub Section (1) of Section 22N of the Maharashtra Police Act. He has submitted that in view of the provisions of Section 22N (2) in the 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. He has submitted 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 in view of proviso to Sub Section (2) of Section 22N of Maharashtra Police Act.

7. He has submitted that in the instant case, it is alleged that the transfer of the applicant has been made on the ground that there were serious complaints against him and on the ground to maintain law and order situation. He has submitted that in

such circumstances, the respondent No. 2 or the Police Establishment Board at District level is not the competent authority to make transfer of the applicant and such power is vested with the Highest Competent Authority as per provisions of proviso to Sub Section (2) of Section 22N of the Maharashtra Police Act. Therefore, the impugned transfer order made by the respondent No. 2 is illegal. He has submitted that merely on the ground of vague allegations, the transfer of the applicant has been made. This shows mala-fidencess on the part of the respondent No. 2. He has submitted that the documents produced by the respondents show that the respondent No. 2 decided to make transfer of the applicant on the basis of office note prepared by her office on 09.06.2017 without placing the proposal before the Police Establishment Board. Therefore, the impugned order of transfer is illegal. Therefore, he prayed to quash the same.

8. The Presenting Officer has submitted that the complaints of serious nature have been received against the applicant and therefore, proposal of transfer of the applicant along with others had been placed before the Police Establishment Board at District Level. The Police Establishment Board took the decision to transfer the applicant and recommended his transfer. On the basis of said recommendation, the impugned order has been issued by the respondent No. 2. He

has submitted that the impugned order has been issued in view of provisions of Section 22N of the Maharashtra Police Act. There is no illegality in the impugned order of transfer. Therefore, he justified the same.

9. The respondents have produced the relevant papers regarding the transfer of the applicant and others. On perusal of same, it reveals that the office of respondent No. 2 put office note dated 09.06.2017 proposing to place the request application for transfer of some of the police employees and proposal to transfer the applicant on the ground that the complaints were received against him. It was also proposed in the said office note to constitute Police Establishment Board at District Level. On the proposal dated 09.06.2017, the respondent No. 2 has passed the order transferring the applicant and it has been mentioned that the transfer has been made on the basis of decision of the committee. But there was no reference to the recommendation of the Police Establishment Board so far as the transfer of the applicant is concerned. The said office note shows that the office had proposed to constitute Police Establishment Board at District Level under the Chairmanship of respondent No. 2, but there is nothing on record to show that the said Police Establishment Board has been constituted by the respondent No. 2 on that day.

10. No doubt, the respondents produced documents i.e. minutes of the meeting of the Police Establishment Board which shows that on the basis of complaints received against the police employees and as per their request, the transfer of the applicant has been effected. The minutes of the meeting had been signed by the respondent No. 2 as Chairman and other two Police Officers as Members. But the said minutes of the meeting does not disclose as to when the board was constituted and when its meeting was held and at what time and place. It does not disclose that the complaints received against the applicant had been placed before it and it has considered the complaints and allegations therein and thereafter the board had taken the conscious decision to recommend the applicant. The said minutes of the meeting is signed by the respondent No. 2 and other two members, but none of them put date below their signatures. Therefore, it is difficult to accept the contention of the respondents that the said meeting was really held on 09.06.2017 and issue of transfer of the applicant was discussed therein.

11. It is contention of the respondents that on the basis of serious complaints, the transfer of the applicant has been made. On going through the provisions of Section 22N (2) of the Maharashtra Police Act, it is crystal clear that it empowers the competent authority i.e. the Police Establishment Board at

District Level to make mid-term transfer of any police personnel of the Police Force in exceptional cases, in public interest and on account of administrative exigencies. But no such circumstances has been made out by the respondent No. 2 while making transfer of the applicant and therefore, it cannot be said that the impugned order is in view of the provisions of Section 22N (1) and (2) of the Maharashtra Police Act.

12. Proviso to sub Section (2) of Section 22N of the Maharashtra Police Act empowers the highest competent authority i.e. Hon'ble Chief Minister to make transfer of any Police Personnel without recommendation of the concerned Police Establishment Board in case of serious complaints, irregularity and law and order problems. The said proviso does not empower the Police Establishment Board at District Level to make such transfer on the said ground. The respondent No. 2 has made transfer of the applicant on the grounds of serious complaints against him and law and order problems, but no such powers were vested with the Police Establishment Board under the Maharashtra Police Act and the highest competent authority only can make such transfer in view of proviso to Sub Section (2) of Section 22N of the Maharashtra Police Act. Therefore, the impugned order is not legal one in view of the said provisions. The respondent No. 2 and the Police Establishment Board at

District Level exceeded their powers given under sub Section (2) of Section 22N of the Maharashtra Police Act and made transfer of the applicant on the ground of serious complaints and law and order problems. Therefore, the said order of transfer requires to be quashed and set aside.

13. In view of the above, the impugned order is not in accordance with the provisions of Section 22N (2) of the Maharashtra Police Act. The respondent No. 2 exceeded her power and made transfer of the applicant on the ground of serious complaints and law and order problems, though she was not empowered to make such transfer. The impugned order is illegal and against the provisions of Section 22N (1) and (2) of the Maharashtra Police Act and therefore, the same requires to be quashed and set aside.

14. Resultantly, the O.A. deserves to be allowed. The impugned transfer order dated 09.06.2017 issued by the respondent No. 2 from Bidkin to Soygaon is hereby quashed and set aside. The respondents are directed to issue appropriate order regarding reposting the applicant on his earlier posting. There shall be no order as to costs.

PLACE : AURANGABAD.
DATE : 21.03.2018.

(B.P. PATIL)
MEMBER (J)