

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.583 OF 2016

DISTRICT : DHULE

Ramesh s/o. Kashinath Ratnaparkhi,
Age : 53 years, Occ: Service,
(as Police Inspector, Dhule Taluka P.S.),
Bungalow No.17, Poilce Officers' Quarters,
Phashi Pool, Dhule.

...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,
Dhule.

3) Diwan Veersing Wasave,
Police Inspector,
Sakri Police Station, Dist. Dhule.

...RESPONDENTS

APPEARANCE : Shri A.S.Deshmukh learned Advocate for
the applicant.

Smt. Priya Bharaswadkar learned Presenting
Officer for respondents

CORAM: HON'BLE SHRI J.D.KULKARNI, MEMBER (J)

DATE: 20th December, 2016.

J U D G M E N T

(Delivered on 20th December, 2016)

Applicant Ramesh Kashinath Ratnaparkhi is working as
Police Inspector. Vide impugned order dated 22-07-2016 he
has been transferred from the post of Police Inspector, Police

Station, Dhule on the same post at Police Headquarter in Human Resources Development Branch, Dhule. According to the applicant, he was earlier transferred by order dated 16-06-2013 from Anti-Corruption Bureau, Mumbai to Dhule District Police Force. On his transfer in the Dhule District, initially, he was temporarily posted at Taluka Police Station by the respondent no.2 i.e. Superintendent of Police, Dhule vide order dated 09-11-2015. Thereafter, vide order dated 27-11-2015, applicant was given regular posting at Taluka Police Station Dhule by the respondent no.2. Applicant has therefore completed 8 and half month's tenure at Taluka Police Station Dhule and has been transferred to Police Headquarter, Human Resources Development Branch vide impugned order dated 22-07-2016.

2. According to the applicant impugned order of his transfer is mid-tenure and midterm since applicant has not completed his tenure at Taluka Police Station Dhule. It is stated that the transfer order has been passed by the Superintendent of Police, Dhule though he has no authority to transfer the applicant. Since applicant's transfer order is mid-term and mid-tenure, right to transfer applicant is vested in the Government being the highest competent authority as per Section 22-N(1) of

the Maharashtra Police (Amendment & Continuance) Act, 2014. Applicant has, therefore, prayed that the impugned order of his transfer dated 22-07-2016 issued by respondent no.2 be quashed and set aside.

3. Respondent no.2 has justified the transfer order by filing reply affidavit. It is stated that the competent authority to transfer the applicant is Police Establishment Board at District Level as per provisions of Section 22-J (1) of the Maharashtra Police (Amendment & Continuance) Act, 2014. Such Board can transfer an employee up to the rank of Police Inspector within District at any time. Respondents also justified the applicant's transfer on various other grounds and submitted that the disciplinary proceedings have been initiated against the applicant and that his transfer was required for administrative convenience.

4. Heard Shri A.S.Deshmukh learned Advocate for the applicant and Smt. Priya Bharaswadkar learned Presenting Officer for respondents. Perused memo of O.A., affidavit/s in reply and various documents placed on record by the parties.

5. Only material point to be considered is whether the impugned order dated 22-07-2016 has been passed by the competent authority and whether it is legal and proper ?

6. Learned Advocate for the applicant has placed reliance on one judgment delivered by this Tribunal in O.A.No.177/2015 and Review Application No.06/2015. O.A.No.177/2015 (Rameshwar Mohanrao Gade V/s. The State of Maharashtra & Ors.) has been decided by the Tribunal on 03-08-2015, wherein the order of transfer of the applicant in the said case, who was also a Police Inspector, passed by the Director General of Police, was quashed and set aside. Against the said judgment and order State had filed Review Application No.06/2015. Order was passed in the Review Application on 16-10-2015 and it was accordingly dismissed.

7. Learned Advocate for the applicant pointed out that in both cases referred above, i.e. O.A.No.177/2015 and Review Application No.06/2016, this Tribunal has observed that in cases falling under Section 22-N-1(a) to (e) the Government is a competent authority to transfer any police personnel, whereas in cases of serious complaints, irregularities, law and order situation, Hon'ble Chief Minister being the highest competent authority is authorized to issue transfer order of any police

personnel without recommendation of the concerned Police Establishment Board. Learned Advocate for the applicant, therefore, submits that the respondent no.2 has no authority to issue transfer order of the applicant, who is an officer of the rank of Police Inspector.

8. I have perused judgment and order passed in O.A.No.177/2015 and Review Application No.06/2015. It is material to note that in the said cases applicant Rameshwar Gade was transferred from the post of Police Inspector, Pachora Police Station, District Jalgaon to the office of State Human Rights Commission, Mumbai. Thus, it was a transfer, not only out of district but also range. Therefore, said transfer was considered as per provisions of Section 22-N(1) of the Maharashtra Police (Amendment & Continuance) Act, 2014. Same is not the case here. In the present case, applicant though is an officer of the rank of Police Inspector, he has been transferred within District and not outside the district. Therefore, provisions of Section 22-N(1) of Maharashtra Police (Amendment & Continuance) Act, 2014 is not applicable to the present case. Consequently, judgment in O.A.No.177/2015 and Review Application No.06/2015 is not applicable in the present case.

9. Though it is stated that the impugned order of transfer has been passed by respondent no.2, perusal of the order shows that the same has passed on the recommendations of the District Police Establishment Board. Transfer order has been signed by the Superintendent of Police, Dhule being head of the Board and being head of the District Police Force. Impugned order of transfer states as under (page 16) :

“[kkyhy uewn ikshyl vf/kdkjh ;kaP;k ojhy
lanHkhZ; v/;kns'k] vf/klwpuke/khy
rjrqnhuqlkj ftYgkLrjkjhy ikshyl vkLFkkiuk
eaMGkus ?ksrysY;k fu.kZ;kUo;s R;kaps
ukokleksj n'kZfoY;k izek.ks ftYgk varxZr
iz'kkldh;] fouarh use.kwd@cnyh dj.;kar
;sr vkgs-

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|---------------|------------------------------------|--|---|-----------------------|
| v- dz - | Ikshyl vf/kdkjhps inuke] uko | l/;kps use.kqdhps fBdk.k ¼dksBwu½ | ufou use.kqdhps fBdk.k ¼dksBs½ | vfHkizk; |
| 4 | Ikshyl fujh{kj jes'k | /kqGs rkyqdk | Ikshyl fu;a=.kd{k vfr-ekuo lalk/ku | iz'kkldh; dkj.kkLr |

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|--|------------------------|----------|------------------------|---|
| | dk'khukFk jRuikj[kh | iks-LVs- | fodkl 'kk[kk] /kqGs | o |
|--|------------------------|----------|------------------------|---|

mijksDr iksyhl vf/kdkjh ;kauh
R;kapsdMhy dk;ZHkkj use.kwd >kysY;k
vf/kdk&;kdMs lqiwnZ d:u rkRdkG
use.kwdhps fBdk.kh gtj Ogkos] dk;ZeqDr
o dk;ZHkkj lksMY;kpk vgoky pktZ
fjiksVZlg ;k dk;kZy;kar lknj djkok-"

Plain reading of the aforesaid communication clearly shows that the Police Establishment Board at District level has taken decision to transfer 11 officers as mentioned in the order, within the district. Said order has been signed by Superintendent of Police, Dhule.

10. In the reply affidavit, it has been stated that the competent authority to transfer a Police Officer within district is Police Establishment Board at the District Level. It is further stated that the Police Establishment Board at District Level consisted of respondent no.2 i.e. Superintendent of Police, Additional Superintendent of Police and the Deputy

Superintendent of Police (Headquarters). This Board has full authority to transfer any officer up to the rank of Police Inspector.

11. I have gone through the provisions of Maharashtra Police (Amendment & Continuance) Act, 2014. It seems that Section 22-J has been amended wherein sub section (2) has been added. It deals with the functioning of the Police Establishment Board at District level. Said section reads as under:

“22J-2. The Police Establishment Board at District Level shall perform the following functions, namely :-

(a) The Board shall decide all transfers, postings of Police Personnel to the rank of Police Inspector within the District Police Force.

(b) The Board shall be authorized to make appropriate recommendations to the Police Establishment Board No.2 regarding the postings and transfers out of the District.

Explanation,- For the purposes of this section, the expression “Police Personnel” means a Police Personnel to the rank of Police Inspector.”

12. The aforesaid section clearly shows that the Police Establishment Board at District Level has to decide all transfers and postings of the Police Personnel up to the rank of Police Inspector within District Police Force. It has been observed by this Tribunal while deciding O.A.No.408/2016 in the case of Sanjay Jagdishlal Issar V/s. State of Maharashtra & Anr. and also in O.A.No.414/2010 in the case of Sanjay Jabaji Khandangle V/s. State of Maharashtra and Anr. as under:

“6. From the provisions of Section 22J(2) as aforesaid, it will be clear that the Police Establishment Board at District level has all powers to decide all transfers, postings of police personnel to the rank of Police Inspector within District Police Force. The only embargo is that, if the board desires that any police personnel shall be transferred out of district then it has to refer the said proposal to the Establishment Board No. 2. Since, the applicant has been transferred within District itself, his transfer falls within the ambit of Section 22J(1). In the Section 22J(1), the Establishment Board has all powers in respect of all transfers which includes mid-tenure transfer or may be on administrative ground or for any special reason and therefore, power exercised cannot be said to be illegal.

(Reproduced as verbatim from judgment in O.A.No.408/2016)”

“13. There is nothing in the amended Section 22J-1 of the Maharashtra Police Act that the approval of the competent authority shall be obtained for mid-tenure transfer and therefore, on this count the approval of highest authority was not necessary. It is because section 22J-1 as amended clearly shows that the Police Establishment Board at District Level is competent to deal with all types of transfers which includes transfers on completion of tenure or mid-tenure, administrative etc. etc. The approval, to be taken is of the Establishment Board No. 2, only when Establishment Board at District Level finds it necessary to transfer the police personnel out of district.”

(Reproduced as verbatim from judgment in O.A.No.414/2016)

13. From the aforesaid legal position it will be clear that so far as transfer of the Police personnel up to the level of Police Inspector is concerned, the Police Establishment Board at District Level has absolute power to transfer the Police Personnel within District on administrative ground or on any other ground. Impugned order passed in this case is also issued on the recommendations of the Police Establishment

Board at District Level, and therefore, it cannot be said that the same has been issued by the incompetent authority.

14. It seems from the reply affidavit filed by the respondents on record that while transferring the applicant, Police Establishment Board has considered all aspects of the applicant's case, such as, that the applicant was found negligent in departmental enquiry and his annual increment was stopped etc.

15. In my opinion, if the competent board at the District Level finds it necessary to transfer the applicant on administrative ground, such action cannot be said to be illegal or erroneous. There is nothing on the record to show that any of the members of the Establishment Board at District Level was acting maliciously or deliberately against the interest of the applicant. In such circumstances, I do not find any reason to interfere in the impugned transfer order. Hence, following order:

ORDER

O.A. stands dismissed with no order as to costs.

MEMBER (J)

YUK oa 583.16 transfer