

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.371/2017

DISTRICT: - DHULE

Vasant Gokul Patil,
Age : 43 years, Occu. : Service
(as Naik Police Constable)
R/o. 7/A, SRP Colony No.1,
Nakane Road, Deopur, 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.

...RESPONDENTS

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

:Shri N.U.Yadav Presenting Officer for the
respondents.

CORAM : B. P. Patil, Member (J)

DATE : 19th December, 2017

J U D G M E N T

[Delivered on 19th day of December, 2017]

The applicant has challenged the transfer order dated
31-05-2017 issued by the respondent no.2 by which he has
been transferred from Local Crime Branch (LCB) Dhule to

Police Station Deopur, Dist. Dhule and prayed to quash and set aside the said order by filing the present O.A.

2. The applicant had entered Police services of the Home Department of Government of Maharashtra as Police Constable on 19-09-1993. On his promotion and transfer, the applicant was relieved from Azadnagar Police Station on 04-06-2015. Thereafter, he joined post of LCB on 05-06-2015. In the meanwhile, on 01-06-2015, he was promoted to the post of Naik Police Constable. Prior to that on 28-05-2016, he has been transferred from Azadnagar Police Station to LCB Dhule. On 21-01-2017, respondent no.2 issued an order and thereby posted the applicant at Police Headquarter Dhule under the garb of temporary attachment though he was not due for transfer. Accordingly, he was relieved from LCB Dhule on 23-01-2017 and since then he has worked in Police Headquarter. On 22-05-2017, respondent no.2 issued an order and regularly posted him at Headquarter by transferring him from LCB against the provisions of S.22N-(1) of Maharashtra Police Act. On 25-05-2017, he had submitted a representation with respondent no.2 challenging the order dated 22-05-2017. Respondent no.2 had not considered the said representation and

on 31-05-2017, he called the applicant in Orderly Room. The applicant has reported his grievance before the respondent no.2. Respondent no.2 has not considered his grievance and again issued impugned order dated 31-05-2017 transferring the applicant from LCB to Deopur Police Station stating that he made request in that regard though the applicant never made request to the respondent no.2 to that effect. It is the contention of the applicant that the impugned transfer order is against the provisions of S.22N of the Maharashtra Police Act. It is mid-tenure transfer and in violation of the provisions of the Maharashtra Police Act. It is his contention that respondent no.2 has no power to transfer him before completion of his normal tenure and the powers are vested with the State Government. Impugned transfer order is in contravention of the provisions of S.22N of the Maharashtra Police Act, and therefore, he challenged the said order by filing the present O.A.

3. Respondent nos.1 and 2 have filed their affidavit in reply and resisted the contentions of the applicant. They have denied that the impugned order is against the provisions of S.22N of the Maharashtra Police Act and it is illegal. It is their contention that the transfer of the

applicant has been effected on the basis of recommendation made by the Police Establishment Board at District level. Not only this but his temporary attachment to Police Headquarter made on 22-01-2017 was regularized on 22-05-2017 as per the recommendations of the District Police Establishment Board. But there were grievances of some of the employees who were transferred, and therefore, all of them including the applicant were called in Orderly Room to consider their grievances. Accordingly, the applicant approached the respondent no.2 and put his grievance before him. At that time the applicant had requested the respondent no.2 to give him posting at Deopur Police Station. Accordingly, respondent no.2 had considered his request and posted him at Deopur Police Station and transferred him from LCB to Deopur Police Station. It is their contention that due procedure has been followed while making transfer of the applicant, and there is no illegality. Therefore, they prayed to reject the O.A.

4. Respondent no.2 filed additional affidavit in reply and contended that in view of the provisions of S.22J-1, he constituted Police Establishment Board at District Level and included name of one Shri Prakash Suryavanshi, Office Superintendent, as additional member of the Board as he

was in custody of the office record. His appointment was made for the convenience of the District Police Establishment Board.

5. I have heard Shri A.S.Deshmukh Advocate for the applicant and Shri N.U.Yadav Presenting Officer for the respondents and perused documents placed on record by the parties.

6. Admittedly, the applicant has joined Home Department of Government of Maharashtra as Police Constable on 19-09-1993 and on 01-06-2015, he was promoted as Naik Police Constable. Admittedly, he has been transferred to LCB Dhule from Azadnagar Police Station. On 04-06-2015, he was relieved from Azadnagar Police Station and he joined LCB Dhule on 05-06-2015. Admittedly, on 21-01-2017, by the order of respondent no.2, he has been temporarily attached to Police Headquarter, Dhule and accordingly, he has been relieved from LCB on 23-01-2017 and he joined the Police Headquarter on 26-01-2017. It is not much disputed that on 22-05-2017, respondent no.2 issued an order transferring the applicant from LCB to Headquarter and thereby regularized his posting at Police Headquarter.

Thereafter, respondent no.2 issued impugned order dated 31-05-2017 and thereby transferred the applicant from LCB Dhule to Deopur Police Station. Impliedly, respondent no.2 has cancelled the order dated 22-05-2017 by which the applicant has been transferred from LCB Dhule to Police Headquarter Dhule.

7. Learned Advocate of the applicant has submitted that the impugned order dated 31-05-2017 shows that respondent no.2 had heard and considered the grievance of the applicant in Orderly Room on the same day and as per his request, the applicant was transferred at Deopur Police Station. He has submitted that in fact the applicant never made request to the respondent no.2 to transfer him at Deopur Police Station. On the contrary, the applicant filed written representation before the respondent no.2 on 25-05-2017 challenging his transfer made to Police Headquarter, Dhule by the order dated 22-05-2017. He has submitted that the applicant has been transferred to LCB Dhule in the month of June, 2015. He had not completed his normal tenure of posting of 5 years on that post but the respondent no.2 has transferred him before completion of his tenure though respondent no.2 had no powers to transfer the applicant before completion of the

tenure in view of the provision of Maharashtra Police Act. He has submitted that respondent no.2 had not constituted the Police Establishment Board at District Level in view of the provisions of Section 22J-1. As per the provisions of said section, committee shall consist of 3 members but the respondent no.2 added one additional member i.e. Shri Prakash Suryavanshi, Office Superintendent illegally in contravention of the said provisions, and therefore, constitution of the committee is not legal, and consequently, decision taken by the committee transferring the applicant by impugned order dated 31-05-2017 is also not legal one. Therefore, he prayed to quash the said order. He has further argued that no special reasons or exceptional circumstances have been recorded while making his transfer from LCB Dhule to Deopur Police Station and on that ground also he prayed to quash the impugned order.

8. Learned P.O. has submitted that the respondent no.2, Superintendent of Police had constituted the District Police Establishment Board by office order dated 22-05-2017 consisting of 4 members in view of the provision of S.22J-1 of the Act. He has submitted that name of Shri Prakash Suryavanshi, Office Superintendent had been included in

the committee as member for the convenience of the committee as he was acquainted with the office procedure and he was also custodian of the official record. He has submitted that mere inclusion of one additional member in the Board does not render the constitution of Board and decision taken by the Board as illegal. He has submitted that the Police Establishment Board has recommended transfer of the applicant from LCB Dhule to Police Headquarter and accordingly earlier order dated 22-05-2017 had been issued. Thereafter, the applicant put his grievance about the transfer, and therefore, his grievance was heard by the respondent no.2, and thereafter, again Police Establishment Board decided to transfer the applicant from LCB Dhule to Police Station Deopur as per his request. He has submitted that on the basis of recommendation of the Police Establishment Board the transfer of the applicant has been made and there is no illegality in the impugned order. Therefore, he prayed to reject the O.A.

9. Before entering into the merits of the matter, it is necessary to consider the provisions of Maharashtra Police Act, so far as the transfers of the Police Personnel. Admittedly, the applicant is a Police Naik. In view of the

provisions of S.22J-1 of Maharashtra Police Act, the State Government shall by notification in official gazette constitute a Board called as Police Establishment Board at District Level consisting the District Superintendent of Police as Chairman, Senior Additional Superintendent of Police as Member, and Deputy Superintendent of Police (Headquarter) as Member-Secretary. The proviso to said section provides that if none of the aforesaid member is from backward class then the District Superintendent of Police shall appoint an additional member of the rank of Deputy Superintendent of Police belonging to such class. Keeping in mind the said provisions, I have to consider whether the respondent no.2 has constituted the Police Establishment Board at District Level accordingly. In this matter, the respondent no.2 has filed his additional affidavit and stated that he constituted the Board comprising of four members on 22-05-2017. Said order is relevant. Therefore, I reproduce the same as under:

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10. In the affidavit, he states that name of Shri Prakash Suryavanshi, Office Superintendent had been included in the Board as additional member as he was involved in all administrative processes of transfer in the capacity of Office Superintendent (Administration) for taking his assistance. No plausible explanation has been given by respondent no.2 under which provisions, he included name of Shri Prakash Suryavanshi, Office Superintendent as member of the Board. Provision of S.22J-1 provides that the Board should consist of only 3 members. Under the provisions of proviso of the said section, the powers were given to Superintendent of Police to appoint an additional member of the rank of Deputy Superintendent of Police belonging to backward class if none of the members mentioned in said Clause (2) of S.22J-1 is from backward class. But in the instant case, there is no such contingency, and therefore, no question of appointing additional member of Police Establishment Board at District Level by the respondent no.2 arises. Not only this

but provision of S.22J-1 does not provide for appointment of any other member than the officer of the rank of Deputy Superintendent of Police as the additional member of the Board. Therefore, appointment of Shri Prakash Suryavanshi who is working as Office Superintendent as additional member to the Board is not legal and it is in contravention of the provisions of S.22J-1. Respondent no.2 Superintendent of Police, Dhule exceeded his powers and appointed Shri Suryavanshi as additional member of the Board illegally. Therefore, constitution of Police Establishment Board by the order dated 22-05-2017 made by the respondent no.2 is illegal and in contravention of provisions of S.22J-1 of the Act. Since the Police Establishment Board established by the Superintendent of Police is illegal, it has no power to take decision or to make recommendation regarding transfer of the Police Personnel as provided u/s.22J-1 and 22N of the Act. Since the Police Establishment Board established by the respondent no.2 is illegal, decision taken by it on 31-05-2017 recommending the transfer of the applicant from LCB Dhule to Deopur Police Station is illegal, and therefore, it requires to be quashed and set aside.

11. On considering facts also, it reveals that the respondent no.2 has made transfer of the applicant before completion of his tenure. In view of the provisions of S.22N(2), the competent authority can make mid-term transfer of the Police personnel of the police force in addition to the grounds mentioned in sub section (1) of the said section. Proviso to sub section (1) of S.22N provides that the Government may transfer any Police Personnel prior to completion of his normal tenure under clause (a) to (e) mentioned therein. There is nothing on record to show that the case of the applicant falls under clause (a) to (e) of the proviso to sub section (1) of S.22N of the Act. Therefore, on that ground also the impugned order dated 31-05-2017 transferring the applicant from the LCB Dhule to Deopur Police Station is not legal and proper. Consequently, it deserves to be quashed and set aside.

12. Considering the abovesaid discussion, it is crystal clear that the impugned order issued by the respondent no.2 transferring the applicant from LCB Dhule to Deopur Police Station is in contravention of provision of S.22N of the Act. The Police Establishment Board constituted by the respondent no.2 is not legal and in accordance with the provisions of S.22J-1 of the Act, and therefore,

recommendation and decision taken by the committee is not legal one. Therefore, impugned order dated 31-05-2017 is not legal one. Therefore, it requires to be quashed and set aside by allowing the O.A.

13. In view of the above facts and circumstances of the case, I pass the following order:

ORDER

- (i) O.A.No.371/2017 is allowed.
- (ii) Impugned transfer order dated 31-05-2017 issued by the respondent no.2 transferring the applicant from LCB Dhule to Deopur Police Station is hereby quashed and set aside.
- (iii) Respondent no.2 is directed to repost the applicant at LCB Dhule, immediately.
- (iv) In the circumstances, there shall be no order as to costs.

(B. P. Patil)
MEMBER (J)

Place : Aurangabad
Date : 19-12-2017.