

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.381/2018

DISTRICT: BEED

Zuberuddin s/o. Rafiquddin Shaikh,
Age : 49 years, Occu. : Police Head Constable,
Head Quarter, Beed,
R/o. Zum Zum Colony, Laxman Road,
Beed, District Beed.

...APPLICANT

V E R S U S

1) The State of Maharashtra,
Through its Secretary,
Home Department,
M.S., Mantralaya,
Mumbai – 400 032.

2) The Superintendent of Police,
Beed, Dist. Beed.

...RESPONDENTS

APPEARANCE :Shri Omprakash D. Mane, Advocate for
the Applicant.
:Shri V.R.Bhumkar, Presenting Officer for
the respondents.

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

DATE : 27th March, 2019

J U D G M E N T
[Delivered on 27th day of March, 2019]

1. By filing the present O.A. the applicant has
challenged the order dated 24/25-05-2018 issued by the

respondent no.2 by which he has been transferred from Local Crime Branch (LCB) Beed to Police Head Quarter, Beed.

2. The applicant was serving as Police Head Constable on the establishment of respondent no.2 on 22-07-2016. He was transferred from Police Station Pimpalner (Rural) to LCB Beed and since then he was working there. On 17-02-2017, respondents issued another order transferring the applicant from LCB Beed to Police Head Quarter, Beed without any valid reason. Again on 29-03-2017 within a period of one month he was sent back to LCB and he was relieved on the same day. On 17-11-2017, respondents passed an order of transfer of the applicant on administrative ground from LCB Beed to Police Head Quarter Beed on account of bandobast. It is his contention that respondent no.2 wanted to keep the applicant at Police Head Quarter, Beed. Therefore, he has initiated departmental enquiry against him on 26-03-2018. The applicant has given his written explanation on 05-04-2018. It is his contention that thereafter the respondent no.2 has issued another order dated 25-05-2018 and posted him at Head Quarter, Beed. It is his contention that

he has not completed his tenure of 5 years at the place of posting i.e. at LCB Beed and he has been transferred before completion of his normal tenure. It is his contention that the impugned transfer order has been issued without assigning reasons and therefore, it is illegal. On these grounds he has prayed to quash the impugned order of transfer.

3. Respondent nos.1 and 2 have resisted the contentions of the applicant by filing their affidavit in reply. It is their contention that the respondent no.2 had received some oral complaints from public about ill-treatment at the hands of the applicant while working at LCB Beed. For verifying the allegations he was posted at Head Quarter for bandobast duty. Thereafter, during the enquiry, it was found that the allegations made against the applicant were not correct and therefore, he was again sent back to LCB, Beed. It has been further contended by the respondents that the previous posting of the applicant at Head Quarter was not a transfer. It is their contention that on 14-11-2017, Sub Divisional Police Officer Beed sent a report to respondent no.1 making serious allegations against the applicant. Therefore, the applicant was deputed to Police Head

Quarter, Beed on the ground of bandobast and it was not a transfer from LCB to Police Head Quarter. Another police man against whom allegations were made was placed under suspension and he was attached to Head Quarter. They have denied that with an intention to keep the applicant at Head Quarter, respondent no.1 has initiated departmental enquiry against the applicant. It is their contention that the applicant was working in LCB Beed and serious allegations were made against him, and therefore, a departmental enquiry was initiated against him and it was in progress. Because of the serious allegations and the departmental enquiry initiated against the applicant, the Police Establishment Board had decided to transfer the applicant from LCB, Beed to Police Head Quarter, Beed. It is their contention that the impugned order has been issued for the above said reasons in accordance with the provisions of Maharashtra Police Act and there is no illegality in the same. Therefore, they have prayed to reject the O.A.

4. I have heard Shri Omprakash D. Mane, Advocate for the Applicant and Shri V.R.Bhumkar, Presenting Officer for

the respondents. Perused the documents placed on record by the parties.

5. Learned Advocate for the applicant has submitted that the applicant was transferred to LCB by order dated 22-07-2016 from Police Station, Pimpalner (Rural) and accordingly he joined his new posting. Thereafter, he has been posted at Police Head Quarter by order dated 17-02-2017. Against he was sent back to LCB on 29-03-2017. He has submitted that within a short time again on 17-11-2017 on administrative ground he has been transferred to LCB, Beed. He has submitted that respondent no.2 was bent upon to keep the applicant at Police Head Quarter, and therefore, he has initiated departmental enquiry against the applicant on 26-03-2018. He has argued that the respondent no.1 was intending to keep the applicant at Police Head Quarter, Beed by hook or by crook. Therefore, he has effected transfer of the applicant from LCB to Police Head Quarter by order dated 25-05-2018. He has submitted that provisions of Maharashtra Police Act have not been followed by the respondents while effecting transfer of the applicant. The impugned order is a mid-term transfer order. Respondent

no.2 has passed the impugned order without recording reasons. Therefore, he has prayed to quash the impugned order by allowing the O.A.

6. Learned P.O. has submitted that there were complaints of serious nature against the applicant when he was working in LCB, Beed. Therefore, the case of the applicant has been placed before the Police Establishment Board at District Level and after considering nature of the allegations made against the applicant, the Police Establishment Board at District Level decided to transfer the applicant on administrative ground, and therefore, the impugned order has been issued by the respondent no.2 accordingly. He has submitted that the impugned order has been issued by following provisions of Section 22N-2 and there is no illegality in the impugned order. Therefore, he has supported the impugned order of transfer.

7. Admittedly, the applicant has been transferred from Police Station, Pimpalner (Rural) to LCB Beed by order dated 22-07-2016. He had not completed his normal tenure of 5 years at the place of posting as provided under Section 22N-1 of the Maharashtra Police Act. He was not due for transfer. His transfer has been made before

completion of his tenure of posting. It is a mid-term and mid-tenure transfer. He has been deputed at Police Head Quarter on different occasions since 2016 on one or the other ground.

8. To effect mid-term transfer of a police personnel up to the rank of Police Inspector within district, Police Establishment Board at District Level is the competent authority and it can make transfer of the police personnel in exceptional cases, in public interest and on account of administrative exigency. Proviso to Section 22N-2 provides that in case of any serious complaint, irregularity and law and order situation, the highest competent authority can make transfer of the applicant without recommendation of the Police Establishment Board.

9. In this case, Police Establishment Board at District Level has recommended and decided to transfer the applicant on account of administrative exigencies. Complaints of serious nature have been received to the respondent no.2 against the applicant. On the basis of the complaints, disciplinary enquiry has been initiated against the applicant regarding misconduct committed by the applicant. The applicant was negligent in discharging his

duties, and therefore, enquiry was initiated against him. The departmental enquiry was in respect of the misconduct made by the applicant when he was discharging his duties at LCB Beed. When the proposal for transfer of the applicant from LCB to Head Quarter at the same place i.e. Beed had been placed before the Police Establishment Board at District Level, the Police Establishment Board considered the proposal in the meeting dated 25-05-2018 and decided to transfer the applicant on administrative ground at Police Head Quarter, Beed in public interest considering the exceptional case. The reasons recorded by the Police Establishment for transfer of the applicant are sufficient to make out an exceptional case for transfer of the applicant. The transfer of the applicant has been made in the public interest and on account of administrative exigency and accordingly the impugned order has been issued.

10. The applicant has filed a false criminal case against an accused under Section 122 of the Maharashtra Police Act instead of Section 109 of the Criminal Procedure Code. Considering the charges leveled against the applicant in departmental enquiry, in my view, Police Establishment

Board has decided to effect transfer of the applicant on account of administrative exigency and in public interest. Therefore, in my view, there is no violation of mandatory provisions of Section 22N-2 of the Maharashtra Police Act. In view of the provisions of Section 22N-2, Police Establishment Board at District Level is the competent authority to transfer the applicant who is serving as Police Head Constable. The competent authority has rightly decided to make transfer of the applicant before completion of his term.

11. Not only this but in view of the provisions of Section 22N-1 normal tenure of posting at a place of posting is 5 years. The place of the posting of the applicant has not been changed by the impugned order. On that ground also in my view, there is no violation of the provisions of Section 22N of the Maharashtra Police Act. Due to the posting of the applicant at the same place i.e. Beed no inconvenience will be caused to the applicant. Therefore, in my view, there is no illegality in the impugned order. Hence, no interference in the impugned order is called for. There is no merit in the O.A. Consequently, the O.A. deserves to be dismissed.

12. In view of the discussion in the foregoing paragraphs,
O.A. stands dismissed without any order as to costs.

(B. P. PATIL)
MEMBER (J)

Place : Aurangabad
Date : 27-03-2019.