

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO.840/2017

DISTRICT: - PARBHANI

Shivaji s/o. Rambhau Wayal
Age : 49 years, Occu. : Police Head Constable
Police Station – New Mondha at Parbhani,
R/o. c/o. Prashant Maharaj, Charthana,
Tq. Jintur, Dist. Parbhani.

...APPLICANT

V E R S U S

- 1) The State of Maharashtra,
Through the Principle Secretary,
Department of Home,
Government of Maharashtra,
Mantralaya, Mumbai-32.
- 2) The Director General of Police,
Maharashtra State, Colaba,
At Mumbai.
- 3) The Inspector General of Police,
Nanded Range at Nanded.
- 4) The District Superintendent of Police,
Parbhani District at Parbhani.
- 5) The Police Inspector/S.H.O.,
New Mondha Police Station
at Parbhani.

...RESPONDENTS

APPEARANCE :Shri R.B.Ade Advocate for Applicant.
:Shri D.R.Patil Presenting Officer for the
respondents.

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

DATE : 2nd August, 2018

O R A L O R D E R
[Delivered on 2nd day of August 2018]

1. Applicant has challenged the impugned transfer order dated 10-11-2017 by which he has been transferred from Police Station Manvat to Nava Mondha Police Station, Parbhani on the post of Writer Police Head Constable (Lekhanik Moharil) by filing the present O.A.
2. The applicant is serving as a Police Head Constable. Since joining the Police Force, he rendered unblemished service. It is contention of the applicant that he has been transferred to the Charthana Police Station by the order dated 30-04-2014 issued by the respondent no.4. By order dated 30-05-2017, he has been transferred from Charthana Police Station to Manvat Police Station. On the basis of the said order he was relieved on 07-11-2017 and he joined the said posting on the same day. He had hardly served on the said post for 4 days. He was not due for transfer but on 10-11-2017 respondent no.4 issued the impugned order and transferred him from Manvat Police Station to Nava

Mondha Police Station on the post of Writer Head Constable.

3. The applicant has contended that the impugned order passed by the respondent no.4 is in contravention of the earlier office order dated 23-07-2016 issued by him wherein it has been mentioned that for the post of Writer Head Constable statutory allowance is payable and nobody should be compelled to work on the post of Writer Head Constable without giving proper training. The applicant has contended that inspite of the specific directions he was compelled to work on the post of Writer Head Constable previously but no special allowance was paid to him. It is his contention that he was never appointed as Writer Head Constable but he has been wrongly posted as Writer Head Constable in the Police Station Nava Mondha, Parbhani by the impugned order of respondent no.4. Not only this but in view of the said order he has been relieved on 16-11-2017. The applicant has further contended that the impugned order is in contravention of provisions of the Maharashtra Police Act, 1951. Therefore, he prayed to quash the impugned order and to repost him at that Manvat Police Station. The applicant has further contended that he has undergone Coronary Angiography on

10-09-2017 and he is taking treatment for the Psychiatric disease since last 17 years but the said facts have not been considered by the respondent no.4 while effecting his transfer. Therefore, he prayed to quash the impugned order dated 10-11-2017 by allowing the O.A.

4. Respondent nos.2 to 4 have filed their affidavit in reply and resisted the contentions of the applicant. They have not disputed the fact that in view of the transfer order dated 30-05-2017 applicant has been transferred from Charthana Police Station to Manvat Police Station. He has been relieved on 07-11-2017 and he joined the said post on the same day. They have not disputed the fact that the impugned order dated 10-11-2017 transferring the applicant as a Writer Head Constable has been issued and the applicant has been relieved accordingly. They have denied that the impugned order of transfer is in contravention of the provisions of Maharashtra Police Act, 1951. It is their contention that the applicant was working as Writer Head Constable during his posting at various Police Stations.

5. Respondents have contended that the police personnel working as Writer Head Constables are very few

in number. When the applicant was transferred at Manvat Police Station at that time also he was working as Writer Head Constable. In Police Station Manvat one more Police Head Constable is serving as Writer Head Constable while no Police Head Constable in the cadre of Writer Head Constable was available at Nava Mondha Police Station. There was requirement of Police Head Constable in the cadre of Writer Head Constable at Nava Mondha Police Station. Therefore, the impugned order of transfer has been issued. It is their contention that there is no illegality in the impugned order of transfer. Therefore, they have prayed to reject the O.A.

6. By filing the additional affidavit in reply the respondent no.4 has admitted the fact that no record of Writer Head Constable as required under paragraph 98 of the Police Manual Part I has been maintained by his office.

7. I have heard Shri R.B.Ade Advocate for Applicant and Shri D.R.Patil Presenting Officer for the respondents. Perused documents produced on record by the parties.

8. Learned Advocate for the applicant has submitted that the applicant was never appointed as Writer Head Constable as provided under paragraph 98 of the Police

Manual Part I. He has submitted that the willingness of the applicant had not been obtained for appointing him as Writer Head Constable but he was forced to discharge the work of Writer Head Constable. He has submitted that in spite of the fact that the applicant worked as Writer Head Constable no special allowance had been paid to him. He has argued that the applicant has been transferred from the Police Station Charthana to the Police Station Manvat by order dated 30-05-2017. In pursuance of the said order he has been relieved on 07-11-2017 and he joined Police Station Manvat accordingly. Within 4 days, he has been transferred to Nava Mondha Police Station from Manvat Police Station by the impugned order on the post of Writer Head Constable. He has submitted that the impugned order is in violation of the Maharashtra Police Act, 1951. Therefore, he has prayed to quash and set aside the impugned order by allowing the O.A.

9. Learned P.O. has submitted that the applicant has previously worked as Writer Head Constable. He has been transferred to Manvat Police Station by order dated 30-05-2017 and he joined there on 07-11-2017. Already one more Police Head Constable in the cadre of Writer Head Constable was working at the said police

station. At the same time the post of Writer Head Constable in Nava Mondha Police Station was vacant. There was need of Writer Head Constable at Nava Mondha Police Station, and therefore, due to administrative exigency, the applicant had been transferred by the respondent no.4. The proposal in that regard had been placed before the Police Establishment Board. The Police Establishment Board in the meeting dated 10-11-2017 decided to transfer the applicant on the post of Writer Head Constable at the Police Station Nava Mondha. He has submitted that there is no illegality in the impugned order. Therefore, he supported the impugned and prayed to reject the O.A.

10. On perusal of the record it reveals that the applicant has been transferred within 4 days from the date of joining his duty in Manvat Police Station. He has joined Manvat Police Station on 07-11-2017. Before completion of tenure applicant has been transferred, and therefore, it is mid-term and mid-tenure transfer.

11. Admittedly, the applicant is serving as a Police Head Constable. As admitted by the respondent no.4, he had not maintained the record regarding the post of Writer Head

Constable as provided under paragraph 98 of the Police Manual Part I. Provisions of paragraph 98 of Police Manual Part I provide that Superintendent of Police has to maintain register of the Writer Head Constable. In order to appoint a Police Head Constable as Writer Head Constable, the desiring police personnel have to make application to the Police Sub Inspector for training and after undergoing training the Police Sub Inspector has to inform the names of such employees to Superintendent of Police. On receiving the names from the concerned Police Sub Inspector, Superintendent of Police has to record name of such employees in the register maintained by him. No such procedure has been followed by the respondent no.4 and he has not maintained register of each trained Writer Head Constable in his office as per paragraph 98 of the Police Manual.

12. Provisions of paragraph 98 of Police Manual Part I are relevant, and therefore, those are reproduced below:

" 98- *yſ[kfud gokynkj] i ksyhl f'ki kbz vlf.k vfhk; lxx pkyo.kkjs tekknj ; kph fu; p rth&*

1- *yſ[kfud Eg.kuu ; kx; vl ysys i ksyhl gokynkj vlf.k ckjfu'kh dtekl kBh ; kx; vl ysys i ksyhl f'ki kbz ; kph fu; fer ukmogh i ksyhl v/kh{k d ; kuh Boyh i kfg ts*

for making transfer of the applicant has been made out. Therefore, in my opinion, the impugned order issued by the respondent no.4 transferring the applicant to Nava Mondha Police Station on the post of Writer Head Constable is in violation of the provisions of Maharashtra Police Act. Therefore, the impugned order requires to be quashed by allowing the O.A.

15. In the facts and circumstances of the case, O.A. is allowed. Impugned order dated 10-11-2017 transferring the applicant from Manvat Police Station to Nava Mondha Police Station on the post of Writer Head Constable is hereby quashed and set aside. Respondent no.4 is directed to repost the applicant at Manvat Police Station by issuing necessary orders forthwith. There shall be no order as to costs.

(B. P. PATIL)
MEMBER (J)

Place : Aurangabad
Date : 02-08-2018.