

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION OF 555 OF 2016

DISTRICT : NAVI MUMBAI

Shri Rajesh Shantaram Devare,)
Occ : Senior Police Inspector,)
Transferred from Nhava Sheva Police)
Station to Special Branch in Navi Mumbai)
Police Commissionerate.)
R/o: 401, Kiran Apartment, Sector-20,)
C.B.D., Belapur, Navi Mumbai.)...**Applicant**

Versus

1. The State of Maharashtra)
Through Addl. Chief Secretary,)
Home Department, having office at)
Mantralaya, Mumbai 400 032.)
2. The Director General & Inspector)
General of Police, [M.S], Mumbai.)
Having office at Old Council Hall,)
S.B Marg, Mumbai 400 039.)
3. The Commissioner of Police,)
Navi Mumbai, having office at)
Navi Mumbai.)

3. Smt Rukmini M. Galande,)
Police Inspector, Nhava Sheva)
Police Station, transferred from)
Crime Branch, Navi Mumbai Police)
Commissionerate.)...**Respondents**

Shri B.A Bandiwadekar, learned advocate for the Applicant.

Shri K.B Bhise, learned Presenting Officer for the Respondent nos 1 to 3.

Shri M.D Lonkar, learned advocate for Respondent no. 4.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

DATE : 26.08.2016

ORDER

1. Heard Shri B.A Bandiwadekar, learned advocate for the Applicant, Shri K.B Bhise, learned Presenting Officer for the Respondent nos 1 to 3 and Shri M.D Lonkar, learned advocate for Respondent no. 4.

2. This Original Application has been filed by the Applicant challenging the order dated 5.5.2016 posting him to Special Branch in Navi Mumbai Police Commissionerate by shifting him from Nhava Sheva

Police Station and posting the Respondent no. 4 in his place.

3. Learned Counsel for the Applicant argued that the Applicant was posted as Senior Police Inspector at Nhava Sheva Police Station by order dated 4.7.2014. He is entitled to 2 years tenure at a Police Station in terms of Section 22N(1)(c) of the Maharashtra Police Act (M.P.A). However, the Respondent no. 3 has transferred the Applicant in the name of deployment by impugned order dated 5.5.2016 to Special Branch. Learned Counsel for the Applicant argued that no reason for transferring the Applicant before completion of his tenure has been mentioned in the impugned order. The Police Establishment Board at Commissionerate level was not properly constituted and decision of such a Board is void ab-initio.

4. Learned Presenting Officer (P.O) on behalf of Respondents no 1 to 3 argued that the Applicant was deployed to Special Branch by the Police Establishment Board, which was properly constituted. There were complaints of inefficiency and insubordination against the Applicant. A preliminary enquiry has been started against the Applicant.

5. Learned Advocate Shri Lonkar argued on behalf of Respondent no. 4 that the Applicant was

transferred after he completed his two years tenure at Nhava Sheva Police Station by the Competent Authority, i.e. the Police Establishment Board at Commissionerate Level. Learned Advocate Shri Lonkar stated that if this Tribunal comes to the conclusion that impugned order is bad in law, the Competent Authority may be given liberty to consider mid-transfer of the Applicant, after he completes his tenure of two years at Nhava Sheva Police Station.

6. The order dated 5.5.2016 challenged by the Applicant reads as follows:-

“तसेच खालील नमूद पोलीस निरीक्षक दर्जाचे अधिकारी यांना विनंती वरून / प्रशासकीय करणास्तव आस्थापना मंडळाचे शिफाराशी नुसार कर्तण्यासाठी तैनात करण्यात येत आहे.”

The Applicant has been deployed (Tainat) from Nhava Sheva Police Station to Special Branch. It is claimed on behalf of the Respondent no. 3 that local transfer do not amount to ‘transfer’ as held by Hon’ble Bombay High Court in Writ Petition no. 7554/2013, P.B. Lonandkar Vs. State of Maharashtra & Others by order dated 22.11.2013. This Tribunal has held that after the Maharashtra Police Act was amended by Ordinance dated 16.2.2015, the tenure of a Police Personnel in a Police Station or a Branch has been fixed and any shifting before the prescribed tenure is over, amounts to transfer under Maharashtra Police Act. Judgment in

Lonandkar's case (supra) is not applicable to transfer of Police Personnel under the Maharashtra Police Act. Another issue of 'deployment' may also be considered at this stage. This Tribunal has held in a number of cases that temporary deployment of a Police Personnel may be warranted provided it is for a specific purpose and comes to an end after that situation no longer exists. In the present case, the Applicant is deployed to Special Branch. No period for which he is deployed is mentioned. The specific purpose of such deployment is also not mentioned in the order dated 5.5.2016. As such, this order is nothing but a transfer order in the guise of an order of deployment.

7. Let us now examine the issue of Police Establishment Board. As per section 22I(2), the Police Establishment Board at Commissionerate Level shall consists of the following Members, namely:-

- (a) Commissioner of Police - Chairperson.
- (b) Two senior most Officers - Member
in the rank of Joint
Commissioner or Deputy
Commissioner of Police
- (c) Deputy Commissioner of - Member Secretary
Police (Headquarters)

Proviso to this section provides that if none of the aforesaid members is from the Backward Class, then the State Government, shall appoint an additional member of the rank of Deputy Commissioner of Police belonging to such class. The Respondents have produced minutes of the meeting of the Police Establishment Board dated 5.5.2016. This meeting was attended by six members. As per Section 22(I)(2) of the Maharashtra Police Act, the number of Members can be four and one additional member can be added by the State Government. It obviously cannot have six Members. It is also not clear, as to which Member was appointed by the State Government under proviso to Section 22I(2) of Maharashtra Police Act. It is presumed that there is no officer in Navi Mumbai Police Commissionerate of the rank of Joint Commissioner of Additional Commissioner of Police. Even then, the Police Establishment Board was clearly not constituted as per Section 22I(2) of the Maharashtra Police Act. As per section 22N(2), the Competent Authority to transfer Officers of the rank of Police Inspector within a Police Commissionerate is the Police Establishment Board at the Commissionerate level. The order dated 5.5.2016 is evidently not passed by the properly constituted Competent Authority and it has to be held as void ab-initio. The Applicant has not completed his tenure of two years at Nhava Sheva Police Station and even a properly constituted Police Establishment Board could not have ordered his transfer

unless there was exceptional case made out for such transfer under Section 22N(2) of the Maharashtra Police Act. A mere complaint from Deputy Commissioner of Zone-2 of inefficiency and disobedience will not be sufficient for this purpose.

8. The impugned order dated 5.5.2016 deploying the Applicant to Special Branch is unsustainable and it is quashed and set aside. The Respondent no. 3 will redeploy the Applicant to his original post as Senior P.I at Nhava Sheva Police Station within one week from the date of this order. This order will not come in the way of the Competent Authority, if it decides to order mid-term transfer of the Applicant as per law. This Original Application is allowed in these terms with no order as to costs.

Sd/-
(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai
Date : 26.08.2016
Dictation taken by : A.K. Nair.