

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.593 OF 2023

DISTRICT : NASHIK

Sub.:- Transfer

Shri Anil Digambar Badgujar.)
Age : 53 Yrs, Working as Deputy)
Superintendent of Police, Anti-Corruption)
Bureau, District Dhule, having Office at)
Santoshi Mata Chowk, Dhule transferred)
to Nashik and Residing at A/P Faghe,)
Tal. & District : Dhule.)...**Applicant**

Versus

1. The Director General of Police,)
Anti-Corruption Bureau, [M.S.],)
Mumbai, having office at Sir)
Pochkhanwala Road, Worli Police)
Camp, Worli, Mumbai – 400 030.)
2. Abhishek Dilip Patil.)
Aged : Adult, Working as Deputy)
Superintendent of Police, ACB,)
Nashik, having office at Nashik.)
3. The State of Maharashtra.)
Through Additional Chief Secretary,)
Home Department, Mantralaya,)
Having office at Madam Cama Road,)
Opp. Mantralaya, Mumbai – 32.)...**Respondents**

Shri A.V. Bandiwadekar, Advocate for Applicant.

Smt. A.B. Kololgi, Presenting Officer for Respondent No.1 & 3.

Shri U.V. Bhosle, Advocate for Respondent No.2.

CORAM : Shri Debashish Chakrabarty, Member-A

DATE : 01.07.2024

JUDGMENT

1. The Applicant has invoked provisions of 'Section 19' of 'The Administrative Tribunals Act, 1985' to challenge Order dated 17.05.2023 of 'DG - ACB, Maharashtra State, Mumbai' by which he was transferred from post of 'Dy. SP-ACB' at Dhule to post of 'Dy. SP-ACB' at Nashik and 'Respondent No 2' was transferred from post of 'Dy. SP-ACB Nashik' to post of 'Dy. SP-ACB' at Dhule.

2. The learned Advocate for Applicant stated that Applicant who belongs to cadre of 'Police Inspector' was by Order dated 14.08.2021 of 'DGP, Maharashtra State' transferred on 'One Step Promotion' to post of 'Dy. SP-ACB' at 'Head Office' of 'DG-ACB, Maharashtra State, Mumbai'. Subsequently Applicant by Order dated 21.12.2021 of 'DG - ACB, Maharashtra State, Mumbai' came to be transferred from post of 'Dy. SP-ACB' at 'Head Office' to post of 'Dy. SP-ACB' at Dhule.

3. The learned Advocate for Applicant then stated 'SP-ACB' of Nashik Range had recorded that Applicant reported from 'Head Office' of 'DG-ACB, Maharashtra State, Mumbai' on 25.12.2021 and joined on post of 'Dy. SP-ACB' at Dhule on 27.12.2021.

4. The learned Advocate for Applicant mentioned that even although Applicant had completed only about One Year & Four Months on post of 'Dy. SP-ACB' at Dhule, yet he came to be transferred to post of 'Dy. SP-ACB' at Nashik and 'Respondent No.2' was transferred from post of 'Dy. SP-ACB' at Nashik to post of 'Dy. SP-ACB' at Dhule.

5. The learned Advocate for Applicant emphasized that as per provisions of 'Section 22N[1][e]' of 'Maharashtra Police Act, 1951' the

'Normal Tenure' applicable to Applicant is 3 Years; although he was serving on 'One Step Promotion' in 'Specialized Agency', because Applicant continues to hold substantive post of 'Police Inspector'.

6. The learned Advocate for Applicant stressed it was pertinent to note that Applicant who is 'Police Inspector' was temporarily serving in establishment of 'DGP-ACB, Maharashtra State on 'Fortuitous Promotion'. Thus, it was evident that Applicant is just officiating in higher rank as 'Dy. SP-ACB' at Nashik.

7. The learned Advocate for Applicant then drew attention to issue of constitution of 'PEB' of 'Specialized Agency' under 'Section 22J3' of 'Maharashtra Police Act 1951'; to emphasize that it should consist of 'DGP-ACB, Maharashtra State, Mumbai' as 'Chairperson' and 3 'Senior most Police Officers' of 'Specialized Agency' as 'Members' and mandatorily have 'Additional Member' from 'Backward Classes'; but these provisions were not observed when case of Applicant was considered by 'PEB' but yet resulted in Order dated 17.06.2023 of 'DG-ACB, Maharashtra State, Mumbai' whereby Applicant was transferred from post of 'Dy. SP-ACB' at Dhule to post of 'Dy. SP-ACB' at Nashik and 'Respondent No 2' was transferred from post of 'Dy. SP-ACB' at Nashik to post of 'Dy. SP-ACB' at Dhule.

8. The learned Advocate for Applicant thereupon contended that transfer of Respondent No. 2 from post of 'Dy. SP-ACB' at Nashik to post of 'Dy. SP-ACB' at Dhule when he was also not due for transfer was outcome of 'Political Influence' exerted by 'Respondent No.2'. Thus, 'PEB' decided to recommend transfer of 'Respondent No.2' in place of Applicant on post of 'Dy. SP-ACB' at Dhule.

9. The learned Advocate for Applicant further contended that Order dated 17.05.2023 of 'DGP-ACB, Maharashtra State, Mumbai' was purported to have been issued on request; but in so far as Applicant was

concerned, no such request was ever made either by way of Application or Oral Request to any 'Superior Authority' including 'DG-ACB, Maharashtra State, Mumbai' to seek transfer from post of 'Dy. SP-ACB' at Dhule to post of 'Dy. SP-ACB' at Nashik.

10. The learned Advocate for Applicant summed up by emphasizing that under provisions of 'Explanation-(b)' below 'Section 22N(2)' of 'Maharashtra Police Act 1951', the 'Competent Authority' to approve transfer of Applicant from the post of 'Dy. SP-ACB' at Dhule to post of 'Dy. SP-ACB' at Nashik, if it had been so recommended by 'PEB-1' was 'Hon'ble Home Minister' and not 'PEB' at level of 'Specialized Agency' which is headed by 'DG-ACB, Maharashtra State, Mumbai'.

11. The learned PO relied in Affidavit-in-Reply dated 05.06.2023 filed on behalf of 'DG-ACB, Maharashtra State, Mumbai' to emphasize that transfer of Applicant to post of 'Dy. SP-ACB' at Nashik was not out of 'Specialized Agency' but within it from one field unit to another with both of them under jurisdiction of 'SP-ACB' of 'Nashik Range' at Nashik and 'Normal Tenure' of Applicant would still be 3 Years under establishment of 'DG-ACB, Maharashtra State, Mumbai'. Thus, no contravention had occurred of the provisions of 'Section 22N1(e)' of 'Maharashtra Police Act 1951'. The 'Normal Tenure' of 3 Years is required to be counted as entire period within establishment of 'DG-ACB, Maharashtra State, Mumbai' & not separately at each 'Unit Level' like post of 'Dy. SP-ACB' at Dhule or 'Dy. SP-ACB' at Nashik. Therefore, it was not correct to contend that Order dated 17.05.2023 resulted in 'Mid-Term' and 'Mid-Tenure' transfer of Applicant from post of 'Dy. SP-ACB' at Dhule in place of 'Respondent No.2' on post of 'Dy. SP-ACB' at Nashik.

12. The learned PO again relied on Affidavit-in-Reply dated 05.06.2023 filed on behalf of 'DG-ACB, Maharashtra State, Mumbai' to state that post of 'Dy. SP-ACB' at Dhule was held by Applicant not on regular promotion but upon 'One Step Promotion' given in 'Specialized Agency'.

The transfer of Applicant under establishment of 'DGP-ACB, Maharashtra State, Mumbai' has therefore resulted in 'One Step Promotion' of Applicant and it was only for limited purposes of investigations done by 'Specialized Agency' but not for purposes of any establishment matter of Applicant. Hence, for all administrative purposes Applicant continues to hold substantive post of 'Police Inspector'.

13. The learned PO submits that Applicant will be considered to be on 'One Step Promotion' so long as he continues to serve in establishment of 'DG-ACB, Maharashtra State, Mumbai' and whenever Applicant is transferred out; he will be reverted to substantive post of 'Police Inspector'. Therefore, it is to be held that Applicant is only officiating in rank 'Dy. SP-ACB' at Nashik on basis of GR of Home Department dated 20.08.1985 and this post held by Applicant is on 'Fortuitous Promotion' which is temporary or ad-hoc in nature. Therefore, it was not correct to contend 'PEB' of 'Specialized Agency' was not 'Competent Authority' to decide about transfer of Applicant from post of 'Dy. SP-ACB' at Dhule to post of 'Dy. SP-ACB' at Nashik.

14. The learned PO then relied on 'Affidavit-in-Sur-Rejoinder' dated 05.07.2023 to highlight that Applicant had been given 'Displeasure Letters' & 'Memos' dated 30.03.2022, 17.05.2022, 09.01.2023, 08.05.2023, 08.05.2023 and 08.05.2023 by 'SP-ACB' of 'Nashik Range' and even drew attention to 'Punishment Orders' passed on 23.02.2023 and 23.02.2023 by 'Additional DGP (Admn.), Maharashtra State, Mumbai'.

15. The learned Advocate for 'Respondent No.2' contended that it was outrightly false to suggest that 'Respondent No.2' had requested for transfer from post of 'Dy. SP-ACB' at Nashik to post of 'Dy. SP-ACB' at Dhule and baseless to mention that 'Respondent No.2' had brought 'Political Influence' upon 'DG-ACB, Maharashtra State, Mumbai'.

16. The learned Advocate for 'Respondent No.2' emphasized that 'DGP, Maharashtra State, Mumbai' by Order dated 14.08.2021 had transferred Applicant to establishment of 'DG-ACB, Maharashtra State, Mumbai' on post of 'Dy. SP-ACB' at 'Head Office' while he was serving on substantive rank of 'Police Inspector'. The learned Advocate for 'Respondent No.2' further stated that Applicant was seen thereafter given 'One Step Promotion' by Order dated 06.09.2021 of 'DG-ACB, Maharashtra State, Mumbai'.

17. The learned Advocate for 'Respondent No.2' stated that it was pertinent to note was that Applicant within just 4 months of joining as 'Dy. SP-ACB' at 'Head Office' came to be posted as 'Dy. SP-ACB', at Dhule by way of 'Internal Transfer' as per Order dated 24.12.2021 of 'DG-ACB, Maharashtra State, Mumbai'.

18. The learned Advocate for 'Respondent No.2' further stated that if contentions of Applicant were to be accepted that 'DGP-ACB, Maharashtra State, Mumbai' was not competent to issue Order dated 17.05.2023 for 'Internal Transfer' of Applicant to post of 'Dy. SP-ACB' at Nashik; then the DG-ACB, Maharashtra State, Mumbai' was also not competent to issue following earlier orders of Applicant :-

i) Order dated 06.09.2021 granting 'One Step Promotion' to Applicant upon joining on post of 'Dy. SP-ACB' at 'Head Office'.

ii) Order dated 24.12.2021 of 'Internal Transfer' of Applicant from post of 'Dy. SP-ACB' at 'Head Office' to post of 'Dy. SP-ACB' at Dhule.

19. The learned Advocate for 'Respondent No.2' contended that if Order dated 17.05.2023 about 'Internal Transfer' of Applicant from post of 'Dy. SP-ACB' at Dhule to post of 'Dy. SP-ACB' at Nashik were to be held as bad in law, then earlier Order dated 24.12.2021 must also be quashed and set aside and Applicant should be posted back as 'Dy. SP-ACB' at 'Head Office' of 'DGP-ACB, Maharashtra State, Mumbai'. The learned Advocate for 'Respondent No.2' contended that Applicant was thus only

trying to be an opportunist by selectively challenging Order dated 17.05.2023 of 'DG- ACB, Maharashtra State, Mumbai'.

20. The Applicant undoubtedly holds substantive rank of 'Police Inspector' but upon joining in establishment of 'DG-ACB, Maharashtra State, Mumbai' and then being granted 'One Step Promotion' to rank of 'Dy. SP-ACB' as per Home Department GR dated 20.08.1985 cannot be considered as still holding rank of Police Inspector '*within the Specified Agency*'. The Applicant is certainly not holding rank of 'Police Inspector' '*within the Specialized Agency*'. Hence, the Order dated 17.05.2023 of 'DG-ACB, Maharashtra State, Mumbai' by which Applicant was transferred to post of 'Dy. SP-ACB' at Nashik and 'Respondent No 2' was transferred to post of 'Dy. SP-ACB' at Dhule does not fulfill provisions of 'Section 22J-4' of 'Maharashtra Police Act 1951' as it pertinently limits the powers of 'PEB' of 'Specialized Agencies' for 'Transfers and Postings' of 'Police Personnel' upto ranks of 'Police Inspectors' serving '*within the Specialized Agency*'. In spite of such clear mandate of law the Order dated 17.05.2023 of 'DG-ACB, Maharashtra State, Mumbai' by which Applicant was transferred from post of 'Dy. SP-ACB' at Dhule to post of 'Dy. SP- ACB' at Nashik and 'Respondent No 2' was transferred from post of 'Dy. SP-ACB' at Nashik to post of 'Dy. SP-ACB' at Dhule has been sought to be justified by 'Affidavit-in-Reply' dated 05.06.2023 and 'Affidavit-in-Sur-Rejoinder' dated 05.07.2023 filed on behalf of 'DG-ACB, Maharashtra State, Mumbai' even affirming that Applicant would continue to have 'Normal Tenure' of 3 Years in establishment of 'DGP-ACB, Maharashtra State, Mumbai'.

21. The justifications sought to be made by 'Affidavit-in-Reply' dated 05.06.2023 and 'Affidavit-in-Sur-Rejoinder' dated 05.07.2023 filed on behalf of 'DG-ACB', Maharashtra State, Mumbai' is only to shield the Order dated 17.05.2023 by 'DG-ACB, Maharashtra State, Mumbai' from scrutiny as it was issued with approval by 'PEB' exercising 'Statutory Powers' under 'Section 22J-4' of 'Maharashtra Police Act 1951' by

treating Applicant as serving '*within the Specialized Agency*' in substantive post of 'Police Inspector' while imprudently overlooking the fact that he was actually serving on post of 'Dy. SP-ACB' upon being given 'One Step Promotion'. The finer aspects of how 'Statutory Powers' under 'Section 22J-4' of 'Maharashtra Police Act 1951' have to be exercised by 'PEB' to be valid in eyes of law has been insightfully elaborated in 'Para 22' & 'Para 23' of Judgment in OA No 60/2020 dated 20.06.2020 which are reproduced below :-

22. "Thus as per explanation even if the Applicant was officiating in higher rank he would be liable for Disciplinary action treating him as higher rank officer namely Deputy Superintendent of Police, Anti-Corruption Bureau. In other words, he was to be treated as Deputy Superintendent of Police, Anti-Corruption Bureau for the purpose of Disciplinary action and not as Police Inspector. This being the position, even if the Applicant's promotion is technically speaking fortuitous promotion and he was only officiating in higher rank of Deputy Superintendent of Police, Anti-Corruption Bureau for misconduct / default if any, punishment should be given as if he is belonging to that higher rank of Deputy Superintendent of Police, Anti-Corruption Bureau. If this is the position it is incomprehensible to contend that for transfer purpose he was to be treated as Police Inspector and to deny him the protection available to the post of Deputy Superintendent of Police, Anti-Corruption Bureau in the provisions of Maharashtra Police Act which inter alia provides that the matter pertains to the transfer of Deputy Superintendent of Police, Anti-Corruption Bureau falls within the ambit of PEB-1 and not PEB-2. In my considered opinion, there cannot be two separate criteria unless law provides so. As the Applicant was discharging all duties and functions of the post of Deputy Superintendent of Police, Anti-Corruption Bureau there is no logic to treat him as Police Inspector for the purpose of transfer and PEB-2 cannot be said competent authority for the transfer of the Applicant.

23. Material to note that as per 'Section 22N' for the transfer and Police Personnel of the above, the rank of Deputy Superintendent of Police, Anti-Corruption Bureau, Home Minister is competent authority

for the general transfer. Whereas as the 'Section 22N(2)' in the exceptional case, in public interest and account of 'Administrative Exigency' the 'Competent Authority' is empowered to make Mid-term transfer of any 'Police Personnel'. As per explanation to 'Section 22N(2)' the expression 'Competent Authority' shall mean 'Home Minister' for transfer of Police Personnel of and above the rank of 'Dy. Superintendent of Police'. Whereas, as per 'Section 22(C)' and 'Section 22(D)' there shall be Police Establishment Board No.1 for the transfer and other service related matters of Police Officers of and above the rank of 'Dy. Superintendent of Police'. It is thus manifest that the Police Establishment Board No.1 constituted as per 'Section 22(C)' whose functions are defined in 'Section 22(D)' of 'Maharashtra Police Act' is the only 'Competent Authority' for the transfer of the Applicant being holding position of Deputy Superintendent of Police, Anti-Corruption Bureau.”

22. The question which thus gets framed for wider consideration from challenge to Order dated 17.05.2023 of 'DGP-ACP', Maharashtra State, Mumbai' about transfer of Applicant from post of 'Dy. SP-ACB' at Dhule to post of 'Dy. SP-ACB' at Nashik; is whether any decision subsequently declared as bad in law would cast its shadows on earlier such decisions even if those had been taken under bonafide belief of having been bestowed with competency under law. So, if Order dated 17.05.2023 of 'DGP-ACP', Maharashtra State, Mumbai were to be held as bad in law; then should earlier Order dated 24.12.2021 by which Applicant had been transferred earlier from post of 'Dy. SP-ACB' at 'Head Office' to post of 'Dy. SP-ACB' at Dhule and several orders of transfer of other 'Police Personnel' above rank of 'Police Inspector' within establishment of 'DG-ACB', Maharashtra State, Mumbai' be also declared as bad in law. The answer to this question would naturally be an unequivocal 'Yes'. On delving deeper beyond present issue about transfer of Applicant from post of 'Dy. SP-ACB' at Dhule to post of 'Dy. SP-ACB' at Nashik into the realm of elaborate framework of law relating to 'Police Personnel' other auxiliary questions will have to be answered as 'Section 22J-4' of 'Maharashtra Police Act 1951' does not empower 'PEB' of 'Specialized

Agency' to deal with '*other service matters*' of 'Police Personnel' which includes granting of 'One Step Promotion' such as to Applicant by Order dated 06.09.2021 of 'DG-ACB', Maharashtra State, Mumbai'. On the other hand, 'PEB' at 'Range Level' as well as 'PEB' at 'Commissionerate Level' are both vested with competence to deal with '*other service related matters*', though significantly such competence has not been vested with 'PEB' at 'District Level' and even 'PEB' at level of 'Specialized Agency'. Further, at 'Apex Level' both 'PEB-1' headed by 'Additional Chief Secretary, Home Department' and 'PEB-2' headed by 'Director General and Inspector General of Police', the law has specially empowered them to even make recommendations respectively to 'State Government' and 'Competent Authority' about redressal of grievances of 'Police Officers' regarding their (i) *Promotion*, (ii) *Disciplinary Proceeding* and (iii) *Other Service Matters*.

23. The observations made above are not to 'Upset The Apple Cart' of long standing practices followed within various Police Establishments including of 'DG-ACB', Maharashtra State, Mumbai', but only to bring to sharp attention subtle variations in nature of functions and extent of 'Statutory Powers' vested with 'PEB's across 'Section 22D'; Section 22F'; 'Section 22H'; 'Section 22J'; 'Section 22J-2' and 'Section J-4' of 'Maharashtra Police Act 1951'. The PEB's at all levels including 'PEB-1' and 'PEB-2' are in fact required to achieve high expectations of law that their collective decisions '*shall comply with and follow all provisions of law including rules and regulations as may be in force from time to time*' as uniquely emphasized by provisions of 'Section 22K' of 'Maharashtra Police Act 1951'.

24. The case of Applicant therefore provides an opportunity for course correction in matters relating to 'Transfers & Postings' of all 'Police Personnel' not only below rank of 'Police Inspectors' but of rank of 'Dy. SP' and 'ACP' and above who are serving '*within the Specialized Agency*' to ensure collective decisions of 'PEB' are always in accordance with

provisions of law including rules and regulations as adjured by 'sui generis' provisions of 'Section 22K' of 'Maharashtra Police Act 1951'.

25. The (i) Order dated 06.09.2021 (ii) Order dated 24.12.2021 and (iii) Order dated 17.05.2021 of 'DG-ACB', Maharashtra State, Mumbai qua Applicant have become extremely vulnerable in tandem as these are striking examples of collective decisions taken by 'PEB' of 'Specialized Agency' through 'Appropriated Exercise' of 'Statutory Powers'. The case of Applicant therefore would not be require to be decided based on facts and merits as it stands settled by law. The transfer of Applicant from the post of 'Dy. SP-ACB' at Dhule to post of 'Dy. SP-ACB' at Nashik and that of 'Respondent No.2' from post of Dy. SP-ACB' at Nashik from place of Applicant to post of 'Dy. SP-ACB' at Dhule by Order dated 17.05.2023 of 'DG-ACB, Maharashtra State, Mumbai' issued upon exercise of 'Statutory Powers' which are not at all envisaged under law therefore must be held as an instance of 'Nihility'.

26. The 'PEB-1' functioning as per Section 22D to recommend transfers & postings of 'Police Personnel' above the rank of 'Dy. SP' and 'ACP' and 'Competent Authority' exercising 'Statutory Powers' under 'Section 22N(2)(b)' would nonetheless be at liberty to decide afresh about continuation or otherwise of Applicant and 'Respondent No.2' on their present posts of 'Dy. SP-ACB' at Nashik and 'Dy. SP-ACB' at Dhule but after taking into due consideration the provisions of Section '22N(1)(a)' which limits 'Normal Tenure' to 2 Years at one place of posting for 'Police Personnel' of and above the rank of 'Dy. SP' and 'ACP' without distinguishing whether they are serving on 'Substantive Posts' in regular 'Police Establishments' such as that of 'Commissioners of Police' or 'Superintendents of Police' or are serving on 'One Step Promotion' in any 'Specialized Agency'.

27. The copy of this Judgment must be forwarded for information and appropriate action to 'Additional Chief Secretary, Home Department' and 'Director General and Inspector General of Police, Maharashtra State'.

ORDER

- (A) The Original Application stands dismissed.
- (B) No Order as to Costs.

Sd/-

(DEBASHISH CHAKRABARTY)
Member-A

Mumbai

Date : 01.07.2024

Dictation taken by :

S.K. Wamanse.

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