

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.329 OF 2018

(Subject :- Transfer)

DISTRICT : Parbhani

Nitin Sudhakarrao Wadkar)
Age:35 years, Occu: Service,)
R/o Police Quarters, Building No.37,)
Room No.434, Parbhani.)...**Applicant**

V E R S U S

1. The State of Maharashtra)
Through the Secretary,)
Home Department,)
Mantralaya, Mumbai)
Through its CPO, MAT,)
Aurangabad.)
2. The Inspector General of Police)
Office of Inspector General of Police)
Mumbai, Maharashtra)
3. The Superintendent of Police,)
Office of Superintendent of Police,)
Parbhani, Tq. and Dist. Parbhani.)
4. Sub Divisional Police Officer,)
Parbhani city, Nanalpeth Police Station)
Parbhani, Tq. and Dist. Parbhani.)...**Respondents**

Shri N.K. Tungar, the learned Advocate for the Applicant.

Shri V.R. Bhumkar, the learned Presenting Officer for the Respondents.

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

Date : 08.01.2019.

J U D G M E N T

1. The Applicant has challenged the impugned order dated 15.5.2018 by which he has been transferred from Nanalpeth Police Station, Parbhani to Purna Police Station, Dist. Parbhani and prayed to quash and set aside the impugned order.

2. The Applicant was appointed as Police Constable on 20.12.2002. Thereafter, he was promoted as Head Constable. At present, the Applicant is working as Head Constable at the office of Respondent No.4. In the month of June, 2013 he was transferred to Nanalpeth Police Station, Parbhani and since then he was working there.

3. On 23.04.2018, I.G. selected squad had been to the area of Nanalpeth Police Station, Parbhani where the Applicant was rendering service as Police Head Constable. The said squad found gambling activities within the area of Nanalpeth Police Station and therefore it had effected the raid and registered the FIR No.164/2018 against accused persons.

4. On 24.04.2018, the Assistant Police Inspector of Nanalpeth Police Station issued show case notice to him on the

basis of letter dated 24.4.2018 issued by Sub Divisional Police Officer, Parbhani. The Applicant gave detailed reply to the notice and contended that on 23.4.2018 he was on duty and he effected two raids and registered crime bearing No.162/2018 and 163/2018 against the accused. It is his contention that he was prompt and cautious about his work. It is his contention that on 15.5.2018, the Applicant received the impugned order issued by the Respondent No.3 thereby transferring him from Nanalpeth Police Station, Pabhani to Purna Police Station. It is his contention that the impugned order is a mid-term and mid-tenure transfer order. He was not due for transfer and therefore, impugned order is illegal. It is his contention that no opportunity of hearing was given to him before passing order. Therefore, he filed the representation dated 16/17.05.2018 to the Respondent No.3 and requested to give him opportunity of hearing. Accordingly, on 24.05.2018, Applicant received the letter directing him to appear before the Respondent No.3 and put up his grievances on 29.05.2018 but before that on 28.05.2018, the Respondent No.4 relived him, one day prior to the opportunity of hearing given to the Applicant. It is his contention that impugned action taken by the Respondent No.3 transferring him

from Nanalpeth is illegal and therefore, he prayed to quash and set aside the impugned order by filing the Original Application.

5. The Respondent Nos.1 to 4 resisted the contention of the Applicant by filing their affidavit-in-reply. They have denied that impugned order is illegal and against the provision of The Maharashtra Police Act, 1951. It is their contention that Squad of Inspector General of Police, Nanded Range has jurisdiction over Parbhani and it conducted successful raid in the area of the Applicant and found that illegal sale of liquor was going on. The Applicant was Beat in-charge of that area and therefore he was held responsible for the same and therefore, he has been transferred on the ground of disciplinary action initiated against him. It is their contention that the Applicant has completed his tenure at Nanalpeth Police Station and therefore he can be transferred even before completion of his tenure in view of provision of Section 22N of the Maharashtra Police Act. It is their contention that Respondent No.3 i.e. Superintendent of Police is vested with the powers to transfer Police Personal against whom any disciplinary action has been initiated or enquiry is pending under the Maharashtra Civil Service (Appeal and Discipline) Rules, 1979 and in view of the provision of Section 22N of the Maharashtra Police Act. It is their contention that the impugned

order is legal and it is not in violation of the Maharashtra Police Act and therefore, they prayed to reject the Original Application.

6. I have heard Shri N.K. Tungar, the learned Advocate for the Applicant and Shri V.R. Bhumkar, the learned Presenting Officer for the Respondents.

7. Admittedly, the Applicant joined Police Force on 20.12.2002 as Police Constable and thereafter he has been promoted as Police Head Constable in due course. Admittedly, the Applicant has been transferred to Nanalpeth Police Station, Parbhani and he was working there since 6.6.2013. Admittedly, the Applicant was Beat in-charge under Nanalpeth Police Station on 23.04.2018. Admittedly, on 23.01.2018, I.G. selected squad effected raid in the area of Nanlpeth Police Station and more particularly in the area of which the Applicant was incharge and found illegal activities therein and therefore, they filed FIR No.164/2018 against accused persons.

8. Admittedly, show cause notice has been issued to the Applicant and Police Personnel on account of their negligence while discharging their duties. The Applicant submitted detailed reply to the said notice. Thereafter, the Applicant has been

transferred from Nanlpeth to Purna by impugned order dated 15.5.2018 issued by the Respondent No.3.

9. Learned Advocate for the Applicant has submitted that the Applicant has not completed his normal tenure at Nanalpeth Police Station and before completion of his tenure, the Respondent No.3 issued the order transferring the Applicant from Nanlpeth to Purna. He has submitted that the Respondent No.3 is not a Competent Transferring Authority in view of the provision of Maharashtra Police Act. He has submitted that the Police Establishment Board at district level is Competent Authority to make transfer order. He has submitted that the impugned order issued by the Respondent No.3 is mid-term and mid-tenure. The Respondents had not followed the provision of Maharashtra Police Act while making transfer of the Applicant and therefore, the impugned order is illegal. He has submitted that the transfer of the Applicant has been made on account of his negligence while discharging the duty as the Special Squad of I.G. conducted raid in the area of the Applicant on 23.4.2018 and found illegal activities like gambling and sale of illicit liquor was giving on there. The Applicant was the in-charge of the said beat. He has submitted that infact, the Applicant had effected two raids in his area on 23.4.2018. When the Applicant was

registering FIR in that regard at police station, the I.G. selected squad had effected the raid in the area where the Applicant was working. Therefore, it can not be said that the Applicant was negligent while discharging his duties. He has further submitted that the Applicant cannot be transferred by way of punishment and therefore he prayed to quash and set aside the impugned transfer order.

10. He has further submitted that in fact, the Applicant was lowest officer in the rank and he cannot take any action without the permission and direction from the superior officer i.e. P.S.I. in respect of illegal activities going on in the area. He has further submitted that I.G. had issued show cause notice to other Police Officers, but none of them has been transferred and no action has been taken against the Superior Officers. He has further submitted that the Applicant has made two raids in the beat on the same date and filed F.I.R. against the offenders. But the said fact had not been considered by the Respondents. He has submitted that the impugned order is arbitrary and mala-fide. Therefore, he prayed to quash and set aside the impugned order by allowing Original Application.

11. Learned P.O. for the Respondents has submitted that the Respondent No.3 i.e. Superintendent of Police (S.P.) has issued the impugned order on account of negligence of the Applicant while discharging the duty. He has submitted that Squad of Inspector General conducted a successful raid in the area of the Applicant and arrested the accused involved in sale of illegal liquor and gambling. Therefore, the impugned order has been issued on account of disciplinary action against him. He has submitted that the show cause notice has been issued to the Applicant and after considering the reply of the Applicant, the Respondent No.3 thought it proper to transfer the Applicant from Nanlpeth on account of administrative exigency and accordingly he issued the impugned order. He has further submitted that the Respondent No.3 is Competent Authority to make the said transfer in view of the provision of Section 22N of Maharashtra Police Act and he is vested with the powers to make the transfer. Therefore, he supported to impugned order and prayed to reject the Original Application.

12. On perusal of the record it reveals that the Applicant was posted at Nanalpeth Police Station, Parbhani in the month of June, 2013 and working there since 6.6.2013. He has not been completed of five years tenure at Nanlpeth Police Station at the

time of issuing of impugned transfer order. In view of the provision of Section 22N(1) (b), the normal tenure of Police Constabulary shall be of five years at one place of posting. The Applicant has not completed his normal tenure at Nanlpeth Police Station. Therefore, the impugned order is mid-term and mid-tenure transfer order. According to the Respondents, the impugned order has been issued by the Respondent No.3 i.e. S.P.- Parbhani, in view of the provision of Section 22N (2) of Maharashtra Police Act. In this regard it is necessary to consider the provision of Section 22N(2) of Maharashtra police Act which reads as under:-

“(2) In addition to the grounds mentioned in sub-section (1), in exceptional cases, in public interest and on account of administrative exigencies, the Competent Authority shall make mid-term transfer of any Police Personnel of the Police Force.”

[Explanation.- For the purposes of this sub-section, the expression “Competent Authority” shall mean:-

Police Personnel	Competent Authority
(a) Officers of the Indian Police Service	Chief Minister;
(b) Maharashtra Police Service Officers of and above the rank of Deputy Superintendent of Police.	Home Minister;
(c) Police Personnel up to the rank of Police Inspector for transfer out of the respective Range or Commissionerate or Specialized Agency.	Police Establishment Board No.2;

- (d) Police Personnel up to the rank of Police Inspector for transfer within the respective Range, Commissionerate or Specialized Agency. Police Establishment Boards at the Level of Range, Commissionerate or Specialized Agency, as the case may be;
- (e) Police Personnel up to the rank of Police Inspector for transfer within the District. Police Establishment Board at district Level:

Provided that, in case of any serious complaint, irregularity, law and other problem the highest Competent Authority can make the transfer of any Police Personnel without any recommendation of the concerned Police Establishment Board.]

Section 22J-1 provides establishment of Police Establishment Police Establishment board at District level. Provision of Section 22J-1 provides as follows:-

“(1) The State Government shall, by notification in the Official Gazette, constituted for the purposes of this Act, a Board to be called the Police Establishment Board at district Level.

(2) The Police Establishment Board at District Level shall consist of the following members, namely:-”

- (a) District Superintendent of Police Chairperson;
- (b) Senior-most Additional Superintendent of Police Member;
- (c) Deputy Superintendent of Police (Head Quarter) Member-Secretary;

Provided that, if none of the aforesaid members is from the Backward Class, then the District Superintendent of Police shall appoint an additional member of the rank of the Deputy Superintendent of Police belonging to such class.

Explanation.- For the purpose of this sub-section, the expression “Backward Class” means the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Special Backward Category and other Backward Classes.”

13. Provision of Section 22N(1) provides normal tenure of Police Personal and Competent Authority. Provisions of Section 22N(1) provides that normal tenure for Police Constabulary shall be five years at one place of posting. The said provision further provides that the Competent Authority for the general transfer mentioned therein shall make the transfer of the Police personal on completion of normal tenure and also provides that, the state of Maharashtra may transfer any Police Personnel, prior to the completion of his normal tenure on the grounds mentioned in clauses (a) to (e) therein.

14. The sub Section 2 of Section 22N of the Maharashtra Police Act provides that the Competent Authority shall make mid-term transfer of any Police personnel in exceptional cases, public interest and on account of administrative exigencies. Explanation to Sub Section 2 of Section 22N, defines Competent Authority for making such transfer and as per the said provision, the Police Establishment Board at district level is Competent Transferring Authority for mid-term transfer of Police Personnel up to the rank of Police Inspector within the district. Proviso to sub section (2) of Section 22N empowers highest Competent Authority to make transfer of any Police Personnel in case of any

serious complaint, irregularity, law and order problem. The Police Establishment Board is Competent Authority to transfer any Police Personnel up to the rank of Police Inspector for transfer within the District but in case of any serious complaint, irregularity, law and order problem the highest Competent Authority can make the transfer of any Police Personnel without any recommendation of the concerned Police Establishment Board. The said provision nowhere empowers the Respondent No.3 or Superintendent of Police to make transfer of any Police Personnel either at the time of general transfer or in the midst of the term. On reading the provision of Section 22N, it is crystal clear that the Respondent No.3 has no authority to make transfer of the Police Personnel. Provision of Section 22N(2) provides that the Competent Authority i.e. Police Establishment Board at District level can make transfer of the Police Personnel at the midst of the term in exceptional case, in public interest and on account of administrative exigency.

15. In instant case, the Respondent No.3 has made the transfer order of the Applicant though he was not invested with such powers. Therefore, impugned order issued by the Respondent No.3 making transfer of the Applicant on account of administrative exigency is illegal.

16. On perusal of record it reveals that the Police Establishment Board as provided in provision of Section 22J - 1(2) has not been constituted by the Respondent No.3 for making transfer of the Police Personnel as provided in Section 22N. Therefore, the transfer order issued by the Respondent No.3 is in violation of Provision of Section 22J and 22N of the Maharashtra Police Act.

17. The Respondents has produced the copy of the minutes of the meeting dated 14.5.2018 to show that the decision was taken by Police Establishment board and accordingly Respondent No.3 issued the order. On perusal of said minutes it reveals that the Police Establishment Board comprises of only two members i.e. Superintendent of Police and Deputy Superintendent of Police (head Quarter). In fact, the Police Establishment Board at District Level consists of at least three members as provided in Section 22J-1(2) of Maharashtra Police Act. Therefore, the Police Establishment Board constituted by the Respondents is not legal one. Consequently, any transfer made by such illegal Police Establishment Board is also illegal.

18. Not only this, but the Respondents have not made whisper about the same in their affidavit-in-reply. Per contra they have contented in the reply that the Superintendent of Police i.e. Respondent No.3 is vested with the power to transfer of Police Personnel against whom any disciplinary action is initiated or enquiry is pending under Section 22N of the Maharashtra Police Act. Therefore, it creates doubt regarding genuineness of the documents of minutes of the meeting of Police Establishment Board dated 14.05.2018. Had it been fact that Police Establishment Board had been constituted and its meeting had been held on 14.5.2018 and the decision to transfer the Applicant had really been taken in that meeting. Then the Respondents would have mentioned the said fact, in their affidavit-in-reply. But fact is different. The Respondents had not mentioned the said fact in their affidavit-in-reply and they had specifically raised the contention regarding the power vested with the Respondent No.3 to make transfer. Therefore, it creates suspicion regarding constitution of Police Establishment Board and its meeting. Even if it is assumed that the Respondents constituted Police Establishment Board in that case also it can not be said to be legal as it is not constituted in view of the

provision of Section 22J-1. Therefore, the decision taken in the said meeting can not be said to be legal.

19. It is also material to note that, the Competent Authority i.e. Police Establishment Board at District Level is empowered to make transfer of any Police Personnel in exceptional case, public interest and on account of administrative exigencies. If the Respondents intend to transfer the Applicant on account of Administrative exigency, the Competent Authority can make transfer of the Applicant accordingly in view of the Section 22N(2) of Maharashtra Police Act. The Respondents are not precluded from making transfer of the Applicant by following due procedure and provision of Law. But in instant case, the Respondents have not followed the provision of Section 22N(2) and the impugned order is not in accordance with the said provision and therefore, it is illegal.

20. Considering the aforesaid facts and discussion, it is crystal clear that Police Establishment Board at District level as provided in Section 22(J) of Maharashtra Police Act has not been duly constituted by Respondent No.3 for transferring the Police Personnel. The transfer of the Applicant has not been recommended by the Police Establishment Board duly

constituted in view of provisions of Section 22N of the Maharashtra Police Act. The impugned order has been issued by the Respondent No.3 though he was not invested with the powers to make transfer of Police Personnel. Therefore, the impugned order is illegal and same requires to be quashed and set aside by allowing the O.A.

21. In view of the discussion in the aforesaid paragraphs, the Original Application is allowed and the impugned order dated 15.5.2018 is hereby quashed and set aside. The Respondent No.3 is directed to repost the Applicant at his earlier place of posting immediately. No order as to costs.

Place:- Aurangabad
Date :- 08.01.2019
Sas

Sd/-
(B.P. Patil)
Member (J)