

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 445 OF 2016

DISTRICT: AHMEDNAGAR

Sanjiv S/o Bhaskar Patole,
Age: 46 years, Occupation : Service,
Working as a P.N. 432,
R/o A-248, Premdan, HUDCO,
Savadi Road, Ahmednagar.

.. APPLICANT

V E R S U S

- 1) The State of Maharashtra
Through the Secretary,
Home Department, Mantralaya, Mumbai-32.

(Copy to be served on Presenting
Officer, Maharashtra Administrative Tribunal,
Mumbai Bench at Aurangabad)

- 2) The Director General of Police,
Maharashtra State,
Mumbai.
- 3) The Special Inspector General of Police,
Nashik Division, Nashik,
District Nashik.
- 4) The Superintendent of Police,
Ahmednagar, Dist. Ahmednagar.
- 5) The Deputy Superintendent of Police,
(Head Quarter) Ahmednagar.
- 6) The Additional Superintendent of
Police, Ahmednagar.

.. RESPONDENTS

APPEARANCE : Shri D.A. Bide, learned Advocate for the
Applicant.

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

CORAM : HON'BLE SHRI J.D. KULKARNI, MEMBER (J)

J U D G M E N T

(DELIVERED ON 8TH SEPTEMBER, 2016.)

The applicant Shri. Sanjiv S/o Bhaskar Patole, has challenged his order of transfer dated 21.05.2016 issued by the respondent nos. 4 to 6 on various grounds and has prayed that the said order be quashed and set aside. Vide impugned order of transfer dated 21.05.2016, the applicant has been transferred from the post of Police Constable, Police Head Quarter, Ahmednagar to Bomb Detection and Destruction Squad (B.D.D.S.), Shirdi. According to the applicant, he has not completed his tenure at Ahmednagar and before transferring any Police Officer to B.D.D.S., some guidelines are to be followed as per the Circular dated 14.03.2016. It is stated that as per the tenure of the Police Officer, a Police Constable has five years tenure at a Police Station and the applicant has not completed the said tenure. The applicant has also claimed mala-fides in his transfer. He submits that the respondent authorities were aggrieved because of the applicant has filed complaint against the superior officers. It is

stated that as per the Circular dated 16.10.2014, issued by the Special Inspector General of Police (Administration) at paper book page nos. 25A to 25C (both inclusive), a person cannot be transferred to B.D.D.S. unless he has undergone training. However, with mala-fide to transfer the applicant, the impugned order has been issued.

2. In the affidavit in reply, the respondents tried to justify the applicant's transfer. It is stated that the applicant has joined Police Service as Police Constable in the year 1990 and was posted at Kotwali Police Station, Ahmednagar. While working there, the applicant stick the pamphlets of Anti Corruption Week, which says that “सज्जनांचे रक्षण, दुर्जनांचे निर्दालन” व “दक्षता जागरूकता सप्ताह” he did not obtain any permission for such pamphlets. On the contrary, he has given his own contact number, though he was not posted in Anti Corruption Bureau. He was kept under suspension on 17.11.2006 and one case of Anti-Corruption Trap was also filed against him. The applicant was deputed for training of B.D.D.S., which was to start from 21.06.2016, but the applicant did not accept the notice for such training nor joined the training. It is stated by the respondents that the applicant was not to deal with the work of search and diffusing the bombs, he will have to control the

mob; rescuing them, to maintain law and order situation of bomb detection. In order to avoid the work, the applicant has filed private complaint in the Court of Chief Judicial Magistrate, Ahmednagar, against the respondent nos. 4 to 6 and one office Clerk for offence punishable u/s 307 of IPC.

3. The respondents also alleged many irregularities and shirking of responsibilities on the part of the applicant. It is stated that he is in habit of non-attending the duties on time, coming late and replying arrogantly. In spite of regular warnings, he has not changed his behavior. The respondents justified the order of transfer.

4. Heard Shri B.A. Bide, learned Advocate for the applicant and Shri V.R. Bhumkar, learned Presenting Officer for the respondents. I have also perused the application, affidavit, affidavit in reply, rejoinder affidavit and various documents placed on record by the respective parties.

5. The only material point to be considered in this Original Application is whether the applicant's transfer is legal and proper?

6. The learned Advocate for the applicant submits that the applicant has not completed his tenure of five years at Headquarter Ahmednagar. From the record, it seems that the applicant is posted at Ahmednagar Headquarter from 27.11.2013. However, from the record it seems that he was also posted at Topkhana Police Station in Ahmednagar itself for three years prior to that.

7. As per the provisions of Section 22J of the Maharashtra Police Act, the District Police Establishment Board is empowered to consider the transfer of various police officers in the District. The learned Advocate for the applicant submits that in the present case, even though the transfer order has been issued under the name of Board, its members were not present at the time of so-called meeting of the Establishment Board. The minutes of the meeting of the Establishment Board are placed on record at paper book page nos. 39 to 47 (both inclusive). The said minutes of the meeting are dated 20.05.2016.

8. The learned Advocate for the applicant has invited my attention to some duty diary entries, which are at paper book page nos. 88 to 93 (both inclusive), which show that

some of officers, who are also member of the Establishment Board were on different duties on the relevant date. I have carefully gone through these entries. However, merely because the officers were busy in the investigation of some crime, on the said date and that, they were at different stations for some time in connection with some investigation that does not mean that the officers were not present in the meeting. The minutes of the meeting have been duly signed by all members of the establishment Board, which includes Superintendent of Police, Ahmednagar, Dy. Superintendent of Police, Ahmednagar and Additional Superintendent of Police, Ahmednagar.

9. Perusal of the minuets of the meeting however, shows that the committee has considered the case of the applicant in details and his conduct and therefore, the committee decided that the applicant shall be transferred in the interest of administration as well in order to keep moral of the Police Force high, as the applicant was trying to defame the department. The observations of the committee as regards applicant are as under:-

“१) पोना/४३२ संजिव भास्कर पाटोळे, नेम-पोलीस मुख्यालय

निलंबन आदेश क्रमांक - कक्ष ४(७)/विचौ/४३२/२०११ दि. ३/१/२०११

तुम्ही तोफखाना पोस्टे येथे नेमणुकीस असताना तुमचे विरुद्ध तोफखानरा

पोस्टे गुरनं II ०१/२०११ लाचलुचपत प्रतिबंधक कायदा सन १९८८ चे कलम ७, १५

प्रमाणे दि. २.४.२०११ रोजी १३.२० वा गुन्हा दाखल करण्यात आला असून तुम्हांस सदर तारखेस म्हणजे दि. २.१.२०११ रोजी १४.०० वा अटक करण्यात आली आहे.

निलंबन आदेश क्रमांक - कक्ष ४(७) /विचौ/४७५/२००६ दि. १४.११.२००६

तुम्ही कोतवाली पोस्टे येथे नेमणुकीस असताना दि. ६.११.२००६ रोजी अहमदनगर शहरातील कोतवाली, तोफखाना व भिंगार कॅम्प पोस्टे येथे पोलीस ठाण्याचे दर्शनी भागावर कोणाही वरिष्ठ पोलीस अधिकारी यांची अथवा ठाणे प्रभारी अधिकारी यांची पुर्वपरवानगी न घेता, लाचलुचपती संदर्भात “सज्जनांचे रक्षण, दुर्जनांचे निर्दालन” व दक्षता जागरूकता सप्ताह अशा आशयाचे फलक व स्टिकर्स लावून त्यावर संपर्कासाठी स्वतःची नावे, मोबाईल नंबर छापले. तुम्हांस लाचलुचपत प्रतिबंधक कायद्यानुसार कारवाई करण्याचे कोणतेही अधिकार नसतांना तुम्ही संपर्कासाठी स्वतःची नावे छापली.

रापोनि, पोलीस मुख्यालय अ.नगर यांचकडील जा.क्र. १००/२०१६ दिनांक २०/०५/२०१६ अन्वये कळविले आहे की, यांचे वर्तन अत्यंत बेशिस्तपणाचे असून त्यांना त्यांचे मनासारखे कर्तव्य पाहिजे असते किंवा एकाच ठिकाणी कायम स्वरूपी आरामाच्या नोकरीची अपेक्षा करत असतात. जर त्यांना त्यांचे मनाप्रमाणे दैनंदिन कर्तव्य दिले गेले नाही तर विनाकारण दैनंदिन कामकाजामध्ये हस्तक्षेप करून कंपनी चालक कार्यालयात येवून वाद घालणे त्याचप्रमाणे माहितीच्या अधिकारात कसलेही अर्ज सादर करून दैनंदिन कामकाजामध्ये अडथळा निर्माण करून मानसीक त्रास देण्याचा प्रयत्न करतात. तसेच ते नेहमी दिलेल्या कर्तव्याकरीता वेळेत हजर होत नाहीत. अथवा सर्व ड्युटी वाटप झालेनंतर जाणून बुजून उशिराने कर्तव्याकरीता हजर होतात, व याबाबत विचारणा केली असता कंपनी चालक, रापोनि, रापोउपनि यांचेशी वाद घालत असतात. त्यांच्या या बेशीस्त वर्तनाने पोलीस मुख्यालयातील शिस्तीस तडा जात असून इतर पोलीस कर्मचारी यांचेवर नियंत्रण ठेवण अवघड जात आहे. त्याचप्रमाणे पोलीस मुख्यालयातील शिक्षा झालेल्या इतर पोलीस कर्मचारी यांना चुकीचे मार्गदर्शन करून वरिष्ठांचे विरोधात त्यांची मानसिकता तयार करण्याचे काम करत असतात. त्यांच्या या प्रवृत्तीमुळे पोलीस मुख्यालयातील दैनंदिन कामकाज व कर्तव्य वाटप करणेस अनंत अडचणी निर्माण होत आहेत. तरी अशा बेशिस्त पोलीस कर्मचारी यांना पोलीस मुख्यालय येथे न ठेवता यांची बदली ही सर्वसाधारण बदल्या २०१६ मध्ये इतरत्र करणेची विनंती आहे. तसेच नमूद कर्मचारी हे सतत पोलीस खात्याच्या कारभारातील चुकीची माहिती वृत्तपत्र संपादकांना देवून पोलीस कर्मचा-याची व जनतेची दिशाभूल करून पोलीस खात्याची बदनामी करण्याचा प्रयत्न करतात. नमूद कर्मचारी हे कोणत्याही वरीष्ठांविरोधात व कार्यालयातील कर्मचारी यांचे विरोधात निनावी अर्जद्वारे माहिती मागवून मानसिक त्रास देण्याचा व दिशाभूल करण्याचा प्रयत्न करत असतात व शासकिय कामात अडचणी आणतात. तसेच त्यांचे पुर्वीचे रेकॉर्ड (सेवाभिलेख) पाहून असे निदर्शनास आले आहे की, त्यांचे वर्तनामध्ये

सुधारणा होत नाही. करीता त्यांची बदली करणे उचित राहिल. त्यांचे बेशिस्त व बेजबाबदार वर्तनाबाबत प्राथमिक चौकशी आदेशीत करण्यांत आलेली आहे.”

10. From the record, it seems that the applicant has filed complaint against the Superintendent of Police in the Court of CJMC, Ahmednagar and he has prayed for conviction of Shri Saurabh Tripathi, Superintendent of Police, Shri Anand Bhoite, Dy. Superintendent of Police, Shri Shashikant Patole, Police Inspector and one Clerk Smt. Minakshi Dhanvate u/s 166, 166A, 167, 307 read with 120 B of the IPC.

11. From the record it seems that the even though the applicant was transferred and was deputed for B.D.D.S. basic course, he did not attend that course, for which the Superintendent of Police, Ahmednagar has issued show cause notice to the applicant, the said enquiry is under process.

12. The learned Advocate for the applicant submits that the applicant has not completed his tenure of five years at Police Headquarter. Even though, the applicant is at Headquarter from 27.11.2013, prior to that he was at Topkhana Police Station at Ahmednagar itself for more than three years. He has not joined on the transferred post till today.

13. The learned Presenting Officer has invited my attention to one Circular dated 01.07.2015 issued by the Government of Maharashtra and particularly paragraph no. 4 of the said Circular which reads as under:-

“४. पोलीस दलातील कोणत्याही शाखा/युनिटमधील पोलीस शिपाई या पदावर एखादया कर्मचा-याची पदस्थापना झाल्यानंतर, तो कर्मचारी पदस्थापनेच्या ठिकाणी सामान्यतः जास्तीतजास्त पाच वर्षे कालावधीपर्यंत राहू शकतो. तथापी प्रशासकीय कारणास्तव वा अन्य कारणास्तव संबंधित आस्थापना मंडळाच्या शिफारशीनुसार आणि सक्षम प्राधिका-यांच्या मान्यतेने संबंधित पोलीस शिपाई याची बदली सामान्य पदावधी पूर्ण होण्यापूर्वी देखील होवू शकते.”

14. The learned Presenting Officer submits that the competent authority i.e. Establishment Board at District level, in the administrative convenience has decided to transfer the applicant. The Board has also recorded the reasons for applicant's transfer. Considering all these aspects, I do not find any reason to go in to the merits of the reasons recorded by the committee for transferring the applicant.

15. The learned Advocate for the applicant submits that those officers who have undergone training under B.D.D.S., can only be posted in the said Squad. It is material to note unless a person undergoes such training, he cannot be said to have experience of defusing Bomb etc. The applicant was sent

for primary training in this regard but he disobeyed that order. From the record, it seems that instead of joining training, the applicant continued to collect information under Right to Information Act against the officers and filing private complaint for serious offences against them and finally filed this Original Application.

16. From the impugned order of transfer, it seems that as many as 90 Police Constables were transferred and barring few, including the applicant, nobody has challenged the said order. The said order has been issued in the administrative interest and the Establishment Board is the best person to know as to what was the administrative aspect in transferring those 90 officers, including the applicant.

17. In view of the discussions in foregoing paragraphs, I do not find any mala-fides in the order of transfer of the applicant. The District Establishment Board is the competent authority to transfer any Police officers up to the rank of Police Inspector within the District Police Force including even mid-term transfer. The applicant has already completed more than six years at Ahmednagar. Considering his tenure at Ahmednagar Headquarter as well as Topkhana Police Station

(together) and even for sake of argument it is accepted that he has not completed five years of his tenure at Ahmednagar Headquarter, the respondents have every authority to transfer him in the administrative convenience. Hence, I do not find any merits in the O.A. and hence, I pass following order:-

O R D E R

The Original Application stands dismissed with no order as to costs.

(J.D. KULKARNI)
MEMBER (J)