

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 112 OF 2022
(Subject – Transfer)**

DISTRICT : BEED

Bharat S/o Dnyanoba Raut,)
Age : 55 years, Occu. : Govt. Government)
Service (Deputy Superintendent of Police)
(ACB), Beed.)
R/o. Tamalwadi, Tq. Tuljapur, Dist. Osmanabad.).... **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
(Through its Additional Chief Secretary),)
Department of Home, Mantralaya,)
Mumbai.)
2. **Director General of Police,**)
Maharashtra State, Mumbai, Shahid)
Bhagat Singh Marg, Mumbai)
3. **Director General of Police (ACB),**)
Maharashtra State, Mumbai, Shahid)
Bhagat Singh Marg, Mumbai.)
4. **Superintendent of Police (ACB),**)
Aurangabad Division, Aurangabad.)
5. **Shankar S/o Kisanrao Shinde,**)
Age : 43 years, Occu. : Service,)
R/o Bhagwat Residency, Flat No. 6,)
Canara Bank Colony, Beed.) **...RESPONDENTS**

APPEARANCE : Ms. Pradnya Talekar, Advocate holding for Shri
S.B. Talekar, Advocate for the Applicant.

: Shri M.S. Mahajan, Chief Presenting Officer for
Respondent Nos. 1 to 4.

: Shri Avinash Deshmukh, Advocate for
respondent No. 5

CORAM : **SHRI V.D. DONGRE, MEMBER (J).**

DATE : **21.10.2022.**

ORDER

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, the present Original Application is filed challenging the impugned order of transfer of the applicant dated 08.02.2022 (Annexure A-1) issued by the respondent No. 2 i.e. the Director General of Police, Maharashtra State, Mumbai and further consequential posting order of the applicant dated 09.02.2022 (Annexure A-2) issued by the respondent No. 3 i.e. the Director General of Police (ACB), Maharashtra State, Mumbai, whereby the applicant has been transferred from the post of Deputy Superintendent of Police (ACB), Beed to the post of Police Inspector, Police Training School, Jalna.

2. After completion of pleadings and hearing both the parties, this Original Application was disposed of by the order dated 13.07.2022 in following terms :-

ORDER

The Original Application No. 112/2022 is allowed in following terms :-

- (1) *Impugned order of transfer of the applicant dated 08.02.2022 (Annexure A-1) issued by the respondent No. 2 i.e. the Director General of Police, Maharashtra State, Mumbai and further consequential transfer order of the applicant dated 09.02.2022 (Annexure A-2) issued by the respondent No. 3 i.e. the Director General of Police (ACB), Maharashtra State, Mumbai, whereby the applicant has been transferred from the post of Deputy Superintendent of Police (ACB), Beed to the post of Police Inspector, Police Training School, Jalna are hereby quashed and set aside as prayed for by the applicant.*
- (B) *The respondents are directed to repost the applicant in the circumstances as above, at his earlier place of posting i.e. on the post of Deputy Superintendent of Police (ACB), Beed within a period of one month from the date of this order.*
- (C) *There shall be no order as to costs*
- (D) *The original record produced for perusal of the Tribunal be returned to the learned C.P.O.”*

3. Newly added respondent No. 5 viz. Shankar Kisanrao Shinde, who during pendency of the present Original Application was posted in place of the applicant's post of Deputy Superintendent of Police (ACB), Beed vide his transfer order dated 22.02.2022 (Annexure R-1 at page No. 198 of the paper book) challenged the said order dated 13.07.2022 passed in the present O.A. No. 112/2022 by filing W.P. No. 7709/2022. The said W.P. came to be disposed of by the order dated 22.07.2022, thereby the Hon'ble High Court was pleased to set aside the

order dated 13.07.2022 passed by this Tribunal and restored back the said O.A. to the file of this Tribunal for disposal afresh in accordance with law. By the said order, the applicant herein was permitted to join Shri Shankar Kisanrao Shinde as present respondent No. 5. The applicant accordingly joined the respondent No. 5. The said respondent No. 5 herein (petitioner in W.P. No. 7709/2022) was allowed to file affidavit in reply. Accordingly, the respondent No. 5 has filed affidavit in reply together with documents annexed therein at page Nos. 187 to 202.

4. Meanwhile, the respondent Nos. 2 and 3 also filed additional affidavit in reply together with the additional documents at page Nos. 179 to 186 of the paper book.

5. The applicant filed affidavit in rejoinder to the additional affidavit in reply filed on behalf of respondent Nos. 2 and 3 at page Nos. 203 to 221 of the paper book. The applicant further filed rejoinder affidavit to the affidavit in reply filed on behalf of respondent No. 5 at page Nos. 222 to 238 of the paper book.

6. The respondent No. 5 filed sur-rejoinder to the rejoinder affidavit filed by the applicant (page Nos. 239 to 250 of the paper book).

7. Previous original pleadings between the applicant and respondent Nos. 1 to 4 are already on record. I have to deal with the present Original Application afresh in accordance with the directions of the Hon'ble High Court in W.P. No. 7709/2022.

8. The facts in brief giving rise to this Original Application can be stated as follows :-

(i) The applicant is working as Deputy Superintendent of Police (ACB), Beed pursuant to the order dated 14.08.2021 (Annexure A-5), thereby he was transferred on his request from the post of Police Inspector, Beed to the post of Deputy Superintendent of Police (ACB), Beed. Therefore, the impugned transfer order came to be issued.

(ii) It is contended that it is a mid-term and mid-tenure transfer order and is issued in contravention of the provisions of Section 22N of the Maharashtra Police Act, as well as, in contravention of the provisions of Section 3 and 4 of the Transfer Act, 2005. According to the applicant, the impugned transfer order is passed or issued in colorable exercise of power and for extraneous reason and ulterior purposes. By the said impugned order, the applicant has

been reduced in the rank of Police Inspector from the post of Dy. Superintendent of Police.

(iii) It is further contended that the preliminary enquiry was conducted against him in respect of acceptance of amount of Rs. 30000/- from one Shri Sunil Popat Abdar by the applicant on or about 24.12.2021 for using it for the purpose of trap. In that respect, it is stated that the said complainant Shri Sunil Popat Abdar had lodged complaint with the applicant on 23.12.2021 against Gram Sevak of village Velturi, Tq. Ashti, Dist Beed viz. Sayyad Shakil Jamadar, who was allegedly demanding Rs 30,000/- from the complainant for disbursement of his bills in respect of work executed by him. In spite of verifying the complaint on voice recorder through mobile talking, trap held on 24.12.2021 was failed. In view of the same, the applicant returned the amount of Rs. 30,000/- to the complainant. The complainant however, made complaint dated 27.12.2021 (Annexure 'A-7') to the Superintendent of Police, ACB, Aurangabad and the Superintendent of Police, ACB, Aurangabad issued show cause notice dated 27.12.2019 (Annexure 'A-8') to the applicant calling his

explanation about taking the said amount of Rs 30,000/- and retaining the same with him.

(iv) It is further contended by the applicant that immediately after failure of trap, the applicant returned the said amount of Rs 30,000/- to the complainant. The complainant issued acknowledgment on 27.12.2021 (Annexure 'A-7'). The complainant thereafter was not interested in pursuing the complaint. The applicant therefore, sent letter dated 31.12.2021 (Annexure 'A-9') seeking guidance from the Superintendent of Police, ACB, Aurangabad regarding registration of offence against the Gram Sevak. Meanwhile, the complainant preferred communication dated 05.01.2022 (Annexure 'A-10') to the Superintendent of Police, ACB, Aurangabad taking his complaint back since the Gram Sevak had already cleared his bills. The Superintendent of Police, Aurangabad, thereafter by letter dated 06.01.2022 (Annexure 'A-11') directed the applicant to take necessary action as permissible under the provisions of Prevention of Corruption Act, 1981 and Cr. P.C. 1973 stating that in the report submitted by the applicant it is stated that it does

not appear that the Gram Sevak would demand money when he has accomplished the work.

(v) In the circumstances as above, it is learnt by the applicant that the complainant has lodged complaint against the applicant before the Superintendent of Police, ACB. Aurangabad in respect of said incident as hereinabove stated. The applicant was neither reluctant nor negligent in processing the complaint and registering the offence against the Gram Sevak. The said complaint was not communicated to the applicant and hence, the applicant has no means to know outcome of the preliminary enquiry. The applicant has also offered his explanation to the show cause notice vide letter dated 21.1.2022 (Annexure 'A-13') and immediately thereafter the impugned transfer order was issued against the applicant. It is not in accordance with the provisions of section 3 & 4 of the Transfer Act, 2005, as well as, the provisions of Section 22N of the Maharashtra Police Act. There is mention of Section 22N(2) of the Maharashtra Police Act in the impugned transfer orders dated 08.02.2022 (Annexure 'A-1') and 09.02.2022 (Annexure 'A-2'), but no any ground as contemplated under sub-section 1 of Section 22N of the

Maharashtra Police Act is mentioned therein. The ground of transfer is vague and it does not reflect any exceptional reason, public interest and on account of administrative exigency.

(vi) In view of above, it is the contention of the applicant that in nutshell his impugned order of transfer is mala-fide and seems to have been issued for extraneous proposes. The ground of alleged administrative exigency as contemplated under Rule 22N(2) of the Maharashtra Police Act needs to be examined closely in this case, more particularly when there was no any lapse on the part of applicant while investigating the concerned crime registered against the Gram-Sevak. The applicant has acted in accordance with law and promptly and also acted upon the directions / advise issued by his higher authority. In the circumstances, the impugned order of transfer is arbitrary, discriminatory, unjust and unreasonable and violative of Article 14 and 16 of the Constitution of India. It is issued in colorable exercise of power. No sufficient material was placed before the requisite Police Establishment Board No. 2, which concurred the decision, but without giving any plausible reasons. Moreover, by the

impugned order of transfer one step promotional post given to the applicant on deputation on merit is withdrawn by causing damage to the reputation of the applicant, who has been discharging duties of his post honestly and in accordance with law. Hence, both the impugned orders of transfer are not sustainable in eyes of law and are liable to be quashed and set aside. Hence, the present Original Application.

9. (i) The affidavit in reply is filed on behalf of respondent Nos. 1 to 3 by one Shri Maruti S/o Shankar Pandit, working as the Deputy Superintendent of Police, Anti-Corruption Bureau, Aurangabad, District Aurangabad, thereby he denied all the adverse contentions raised in the present Original Application. At the outset, it is contended that the applicant has been relieved from ACB Unit Beed on his mid-tenure transfer from ACB, Beed to Police Training Centre, Jalna on 10.02.2022 as per the mid-tenure transfer rendered by the Police Establishment Board No. 2 vide this office's order dated 08.02.2022. The applicant, however, has not joined to his new place of transfer.

(ii) It is further contended that the details of postings of the applicant since 2007 if are taken into consideration, the applicant has worked in Beed District in all capacities of P.S.I. to P.I. for more than 10 years and this could be the reason that the applicant has created vested interest while working in ACB, Beed by exhibiting the undesirable and unbecoming conduct while acting and purporting to act in the ACB, a very important and sensitive branch of the Police Department, from the public interest point of view.

(iii) It is further submitted that the respondent No. 3 i.e. the Director General of Police (ACB), Maharashtra State Mumbai submitted proposal vide his letter dated 21.01.2022 (Exhibit R-1) to the office of respondent No. 2 i.e. the Director General of Police, Maharashtra State, Mumbai for effecting the mid-tenure transfer of the applicant for his undesirable and unbecoming conduct, which rendered for not continuing the applicant in the ACB. Contentions raised in the said letter would establish the reasons behind issuance of the impugned order of transfer of the applicant. The applicant has not conducted the investigation of the complaint lodged by one Shri Sunil Popat Abdar of demand of bribe made to him on

23.12.2021 by Gram Sevak of village Velturi, Tq. Ashti, Dist Beed viz. Sayyad Shakil Jamadar, who was allegedly demanding of Rs 30,000/- from the said complainant for disbursement of his bills in respect of work executed by him. The said complainant Shri Sunil Popat Abdar had made complaint to the higher authority i.e. the Superintendent of Police (ACB), Aurangabad against the applicant about lapses committed by him while carrying out the investigation of the said crime. The Superintendent of Police (ACB), Aurangabad got the said complaint inquired into through the Additional S.P. rank officer, who conducted the preliminary enquiry and submitted his report to the Superintendent of Police (ACB), Aurangabad observing that the applicant had not conducted the enquiry properly and leaked the information. The amount given for using as bribe amount, which was given by complainant Shri Sunil Popat Abdar to the applicant, was not returned to him till the complaint against the applicant was made to the superior authority.

(iv) It is further contended that the applicant belatedly acted upon the advice given by the Superintendent of Police (ACB), Aurangabad to lodge FIR in accordance with law, in

view of what transpired during the investigation of the said crime. The conduct of the applicant is found to be undesirable and unbecoming to continue in ACB Beed raising doubt about his integrity. Therefore, conscious decision is taken about mid-tenure transfer of the applicant, which is legal and proper and in accordance with law. For that purpose, the matter was placed before the requisite Police Establishment Board No. 2 and after due consideration of material on record, the proposal of transfer under Section 22N(2) of the Maharashtra Police Act, is concurred by the said Board. In view of the same, there is no any contravention of the provisions dealing with transfer of the Police Officials as incorporated in the Maharashtra Police Act. There is no mala-fide in issuing the transfer order. When the whole chapter dealing with transfer of the Police Officials is inserted in the Maharashtra Police Act, the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (in short "the Transfer Act 2005") will not be applicable while issuing the impugned transfer order. There is no any contravention of any of the case laws of the Hon'ble Supreme Court of India.

In view of the same, the present Original Application is liable to be dismissed.

10. The applicant has filed rejoinder affidavit, thereby denying the adverse contentions raised in the affidavit in reply and further placing on record some documents to exhibit that the applicant has done whatever legally possible in the matter in accordance with law and has followed the advice given by his higher authority, thereby he has reiterated his contentions raised in the Original Application.

11. The affidavit in reply on behalf of respondent No. 4 i.e. the Superintendent of Police (ACB), Aurangabad Division, Aurangabad is not filed.

12. (i) Newly added respondent No. 5 has resisted the application by contending at the outset that even after coming to know that the respondent No. 5 is posted by the transfer order dated 22.02.2022 (Annexure R-1 at page Nos. 198 of the paper book) to the post of Deputy Superintendent of Police, ACB, Beed, which was previously occupied by the applicant, the applicant has not raised any challenge to the said order of transfer of the respondent No. 5 dated 22.02.2022 (Annexure A-1 at page No. 198 of the

paper book), on the basis of which this respondent No. 5 has come in picture in the present case. In view of failure of the applicant on that count, the present Original Application is liable to be dismissed, especially because even if the applicant's impugned order of transfer is quashed and set aside in this O.A., the applicant will not be able to join his previous post, when the transfer order of the respondent No. 5 dated 22.02.2022 is in existence and the respondent No. 5 is occupying the said post. Moreover, the applicant has also not made any prayer for his reposting in case of impugned order of transfer of the applicant dated 08.02.2022 (Annexure A-1) being quashed and set aside. On these counts, the present O.A. is also liable to be dismissed.

(ii) The respondent No. 5 denied the adverse contentions raised in the O.A. assailing the impugned order of transfer of the applicant. It is further submitted that it is not open for the applicant to contend that the order of transfer of respondent No. 5 dated 22.02.2022 (Annexure R-1) in his place having been issued subsequently by the respondent No. 3, would automatically stand cancelled as a consequence in the event of this Tribunal sets aside his

transfer order dated 08.02.2022 (Annexure A-1). It is further submitted that the impugned order of transfer dated 08.02.2022 (Annexure A-1) is issued by the competent transferring authority in accordance with the provisions of Section 22N (2) of the Maharashtra Police Act, thereby due proper scrupulous compliance of the said statutory requirement was done as reflected in the affidavit in reply in view of the contentions raised by the respondent Nos. 1 to 3 in their affidavit in reply. In view of the same, no inference can be caused in the impugned order of transfer of the applicant.

13. In the additional affidavit in reply filed on behalf of respondent Nos. 2 and 3 (Page Nos. 179 to 186 of the paper book), it is specifically contended that the original complainant Shri Sunil Popat Abadar, who had filed complaint against Gramsevak in respect of demand of bribe of Rs. 30000/- for drawing his bills of payment was not satisfied with the procedure adopted by the applicant in carrying out the investigation and he was specifically aggrieved that the applicant did not refund his amount of Rs. 30000/- given to the applicant for the purposes of trap. He made his said grievance in writing to the respondent No. 4 i.e. the Superintendent of Police (ACB), Aurangabad

Division, Aurangabad. During enquiry of the said grievance, the statement of said Shri Sunil Popat Abadar was recorded by the Additional Superintendent of Police, ACB, Aurangabad viz. Shri Vishal Khambe, to whom preliminary enquiry was given. Statement of the said Shri Sunil Popat Abadar was recorded on 01.01.2022, which at page Nos. 185 and 186 of the paper book.

14. The applicant filed rejoinder affidavits to the affidavit in reply filed on behalf of respondent No. 5 and additional affidavit in reply filed on behalf of respondent Nos. 2 and 3, thereby denying the adverse contentions raised therein. It is specifically contended that initially the respondent Nos. 1 to 3 contended that the transfer of the applicant was due to administrative exigency, but now they have come out with a case of applicant's unbecoming conduct and the contrary stand is being taken by the respondent Nos. 1 to 3. In case on administrative exigency, it was open for the Government to transfer the applicant on the post of equal responsibility and status.

15. The affidavit in sur-rejoinder is filed on behalf of respondent No. 5 thereby denying the adverse contentions raised in the affidavit in rejoinder filed on behalf of the applicant. It is contended that the impugned transfer order of the applicant

cannot be said to be stigmatic and causing financial loss to the applicant. In fact, the order of transfer of the applicant to his previous posting as Dy. Superintendent of Police, Beed was request transfer and incidentally such person gets higher pay scale and status and incidental to the said postings. It is further submitted that the transfer of respondent No. 5 whereas from ACB, Mumbai to ACB, Beed on equal status unlike the case of the applicant, who was posted from the post of Police Inspector, ACB to Dy. Superintendent Of Police, ACB, Beed.

16. I have heard the arguments advanced at length by Ms. Pradnya Talekar, learned Advocate holding for Shri S.B. Talekar, learned Advocate for the applicant on one hand, Shri M.S. Mahajan, learned Chief Presenting Officer for the respondent Nos. 1 to 4 and Shri Avinash Deshmukh, learned Advocate for respondent No. 5 on the other hand.

17. After having considered the rival pleadings and submissions made on behalf of all the parties, it transpires that undisputedly the impugned order of posting dated 09.02.2022 (Annexure A-2) issued by the respondent No. 3 i.e. the Director General of Police (ACB), Maharashtra State, Mumbai based on the impugned order dated 08.02.2022 (Annexure A-1) issued by

the respondent No. 2 i.e. the Director General of Police, Maharashtra State, Mumbai is mid-tenure, as well as, mid-term transfer order, more particularly in view of the fact that the applicant was working on the post of Dy. Superintendent of Police (ACB), Beed since 17.08.2021. The applicant basically belongs to the cadre of Police Inspector, but due to his posting with ACB Beed, he has been given one step promotional post of Dy. Superintendent of Police as per the prevailing rules. The impugned order of transfer dated 08.02.2022 (Annexure A-1) records that the said transfer order is issued under Section 22N(2) of the Maharashtra Police Act in concurrence of the requisite Police Establishment Board-2. The impugned transfer order dated 09.02.2022 (Annexure A-2) is issued on the basis of the above-said impugned order dated 08.02.2022 (Annexure A-1).

18. In view of above-said nature of the impugned orders of transfer, relevant provisions which fall for my consideration are proviso to Sub-section (1) of Section 22N and Sub-section (2) of Section 22N of the Maharashtra Police Act, which is as follows :-

“22N. Normal tenure of Police Personnel, and Competent Authority

(1) Police Officers in the police force shall have a normal tenure as mentioned below, subject to the promotion or superannuation :-

- (a).....
- (b).....
- (c).....
- (d).....
- (e).....

Provided that, the State Government may transfer any Police Personnel prior to the completion of his normal tenure, if,-

- (a) disciplinary proceedings are instituted or contemplated against the Police Personnel; or
- (b) the Police Personnel is convicted by a court of law; or
- (c) there are allegations of corruption against the Police Personnel; or
- (d) the Police Personnel is otherwise incapacitated from discharging his responsibility ; or
- (e) the Police Personnel is guilty of dereliction of duty.

(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 expression "Competent Authority" shall mean:-

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

- | | | |
|-----|---|--|
| (d) | <i>Police Personnel upto the rank of Police Inspector for transfer within the respective Range, Commissionerate or Specialized Agency</i> | <i>Police Establishment Boards at the Level of Range, Commissionerate or Specialized Agency, as the case may be;</i> |
| (e) | <i>Police Personnel upto the rank of Police Inspector for transfer within the District.</i> | <i>Police Establishment Board at District Level:</i> |

Provided that, 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.”

Perusal of the above-said provision would show that as per proviso to Sub-Section (1) of Section 22N of the said Act, power to transfer any Police Personnel prior to completion of normal tenure (mid-tenure) vests in the State Government. Further as per Sub-Section (2) thereof, in addition to the grounds mentioned in proviso to Sub-Section (1) as above, 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.

19. The definition of the Competent Authority as stated in Section 2(1A) of the said Act, the “Competent Authority” means the Competent Authority mention in Section 22N. Section 22N of the said Act prescribes different Competent Authorities for

different cadres of Police Officials. As per the explanation under Sub-Section (2) of Section 22N, Police Establishment Board No. 2 is the Competent Authority for the purpose of transfer of Police Personnel up to the rank of Police Inspector for transfer out of the respective Range or Commissionerate or Specialized Agency. The applicant in the present case basically belongs to the cadre of Police Inspector and incidentally he has been rank of Dy. Superintendent of Police while on duty and posted in ACB Beed as per the rules.

20. In this case, the respondents have produced relevant evidence on record to show that concurrence / approval of such Police Establishment Board No. 2 is taken. The said piece of evidence is the minutes of the Police Establishment Board No. 2 meeting held by circulation, which is at Exhibit R-2 (page No. 100 of the paper book). The respondent No. 2 i.e. the Director General of Police, Maharashtra State, Mumbai is the Chairman and the Additional Chief Secretary, Home Department is one of the Members amongst the other Members. The said minutes do not bare signature of the Additional Chief Secretary, Home Department. The Chairman has signed the said minutes on 31.01.2022, whereas the Additional Director General of Police (Establishment), who is Member-Secretary signed it on

01.02.2022. However, other Members who have put their signatures have not put the date below their signatures. Who and on what date the said minutes were prepared is also not reflected in the said minutes. However, as per contents of the said minutes, the report said to have been received about the alleged negligence of the applicant in carrying out the investigation in one matter was reiterated, where it is allegedly revealed that the conduct of the applicant as Police Official is undesirable and was indicative of raising doubt of his integrity and as such separate proposal for taking disciplinary action was also received and meanwhile the proposal was received from the office of respondent No. 3 by the respondent No. 2 for his transfer out of ACB, Beed.

21. In the additional affidavit in reply filed on behalf of respondent Nos. 2 and 3 statement of complainant Shri Sunil Popat Abadar recorded by the Additional Superintendent of Police, ACB Aurangabad in preliminary enquiry held against the applicant is produced at page Nos. 185 & 186 of the paper book. In the said statement, the said Shri Sunil Abadar has reiterated his grievance that the applicant, who had taken Rs. 30000/- cash from him being trap purpose, did not refund the said amount in time and the applicant made trap unsuccessful. In

the minutes of meeting of the Police Establishment Board No. 2, the said allegations somehow are not reflected. From the facts, it appears that the respondent Nos. 1 to 3 are trying to add the ground of legality of the transfer, which will have bearing on the decision making process of the Police Establishment Board No. 2, who is the competent authority under Section 22N(2) of the Maharashtra Police Act. In this regard, it would be just and proper to refer to the additional citations placed on record by the learned Advocate for the applicant, which are as follows :-

- (i) **(1978) 1 Supreme Court Cases 405** in the matter of **Mohinder Singh Gill and another Vs. The Chief Election Commissioner, New Delhi and Others.** In para No. 8 it is observed as follows :-

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought ,out.”

22. In view of above, the respondents justified the impugned order of transfer of the applicant. To substantiate the same, learned Chief Presenting Officer placed reliance on the citation

reported in **(2004) 4 Supreme Court Cases 245** in the matter of

Union of India and Ors. Vs. Janardhan Debanath and

Another. In the said citation, it is held as follows :-

“ For the purposes of effecting a transfer, the question of holding an enquiry to find out whether there was mis-behaviour or conduct unbecoming of an employee is unnecessary and what is needed is the prima facie satisfaction of the authority concerned on the contemporary reports about the occurrence complained of and if the requirement, as submitted by learned counsel for the respondents, of holding an elaborate enquiry is to be insisted upon the very purpose of transferring an employee in public interest or exigencies of administration to enforce decorum and ensure probity would get frustrated.”

23. Learned Chief Presenting Officer strenuously urged before me that in the case in hand the conduct of the applicant while investigating the complaint of corruption lodged by complainant viz. Shri Sunil Popat Abdar would show that the trap was failed due to leaking of information from some private persons, which can be attributed to the applicant and consequently, though the Superintendent of Police, ACB, Aurangabad gave the applicant direction on 05.01.2022, the applicant lodged FIR only on 07.01.2022. This shows that the conduct of the applicant is undesirable and integrity is doubtful and therefore, his continuation with the ACB, Beed would be counter-productive and hence, the impugned order of transfer of the applicant

passed by seeking approval of the requisite Police Establishment Board No. 2 is in accordance with law and more particularly in accordance with the provisions of Section 22N(2) of the Maharashtra Police Act.

24. Learned Advocate for respondent No. 5 submitted that as per the settled law, sufficiency for transfer on administrative exigency or transfer under Section 22N (2) of the Maharashtra Police Act cannot be gone into much by the Tribunal and to substantiate the said proposition, he placed reliance on following citations :-

- (i) **2009 (2) AIR Bom. R 22** in the matter of **State of Maharashtra and Another Vs. Omprakash Ghanshyamdas Mudiraj and Another**. In para No. 17 it is observed as follows :-

“17) Whether the reasons propounded by the State Government for transferring the respondents are sufficient or otherwise could not have been gone into by the Tribunal. The Tribunal even assessed the sufficiency of reasons by referring to the case of one Mr. M.A. Mate, Superintending Engineer in Yawatmal Irrigation Circle having completed target 100% recovery. The said case was considered, as Mr. Mate, according to the Tribunal, was transferred prior to completion of his normal period. Such comparison in the facts of the case was not essential as each case will have to be considered on its own merits by the State. The employer would be the best judge to appreciate performance of its employees and their

suitability mandates that in a particular place. The State shall comply with the At the same time, law necessary requirements as envisaged under the provisions of Section 4(4) for effecting transfers (order) prior to completion of normal tenure of posting. We find that in this case the State has considered individual cases of both the respondents and decided to transfer them. The Tribunal did not discuss the issue of mala fide. Therefore, we are of the opinion that the said issue need not be taken up by us for consideration in exercise of extra ordinary writ jurisdiction under [Article 226](#) of the Constitution of India. We find in the facts of the case that the State had complied with the provisions of Section 4 of the Act of 2005. There are special reasons with the State for effecting transfer orders and the contention of accommodation of respondent No.2 in the facts of the case cannot be accepted.”

- (ii) **AIR 1978 Supreme Court 851** in the matter of **Mohinder Singh Gill and another Vs. The Chief Election Commissioner, New Delhi and Others**. In para No. 8 it is observed as follows :-

“8....We may here draw attention to the observations of Bose J. in *Gordhandas Bhanji* (AIR 1952 SC 16) (at p. 18):

"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to, do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

25. Learned Advocate for the applicant, however, has strenuously urged before me that the applicant has produced on record most of the statements and documents on record in respect of the investigation done by him in respect of the complaint of corruption lodged by Shri Sunil Popat Abdar against Gram Sevak of village Velturi, Tq. Ashti, Dist Beed viz. Sayyad Shakil Jamadar. The said record would show that the trap was not failed due to negligence or any ill motive of the applicant and that the applicant lodged FIR immediately within a few hours on receipt of the advice / direction from the Superintendent of Police, ACB, Beed. She also submitted that there were allegations against the applicant that he did not return the amount of Rs. 30,000/- given by the complainant to him for trap purposes. In fact, the applicant has returned the said amount on 27.12.2021 after trap was failed on 24.12.2021 and thereafter second trap could not be materialized due to non-cooperation of complainant himself, as the accused Gram Sevak said to have processed his bills.

26. At this stage, it would not be out of place to mention the following citations :-

- (i) **2009 (3) Bom. C.R. 673, Bombay High Court** in the matter of **State of Maharashtra Vs. Ashok**

Ramchandra Kore and Anr. in W.P. No. 8116/2008,
dated 18-3/16.4.2009 by the Hon'ble High Court. In the said citation, it is held that after referring to relevant judgments of Supreme Court this Court observed, whether reasons recorded by the State are sufficient or otherwise could not have gone into by MAT, employer would be best Judge who would appreciate performance of his employees and their suitability in particular place, MAT committed error of jurisdiction. There is no fabrication of documents. Mala fides are not established.

(ii) Similarly, it would be just and proper to refer the citation reported in **1993 DGLS(SC) 413, Supreme Court** in the matter of **Union of India Vs. S.L. Abbas in Case No. 2348/1993, dated 27.04.1993.** In the said citation in para No. 7, it is held as follows :-

“7. Who should be transferred where is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala-fides or is made in violation of statutory provisions, the Court cannot interfere with it. There is no doubt that, while ordering the transfer the authority must keep in mind the guidelines issued by the Government on the subject. Similarly, if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, the husband and the wife must be posted at the same place. The

said guideline, however, does not confer upon the government employee a legally enforceable right.”

27. Learned Advocate for the applicant however, strenuously urged before me that this is a clear cut case of mala-fide, as the material placed reliance upon by the respondents by way of preliminary enquiry report are contrary to the record and drawing inference of doubtful integrity on such halfhearted material is detrimental to promising career of the applicant, who has been chosen to work on one step promotional post of Dy. Superintendent of Police in ACB office Beed, as the applicant is from Police Inspector cadre. The impugned order has caused damage to the reputation of the applicant. In such circumstances, according to the applicant, the impugned order of transfer is not sustainable in the eyes of law. To substantiate the said submissions, she placed reliance on the following citations :-

- (i) **(1984) 2 LLN 300** in the matter of **Sheshrao Nagorap Umap (Dr.) Vs. State of Maharashtra and Others**. In the said citation, it is held as follows :-

“The power of transfer must be exercised honestly, bon fide and reasonably. If the exercise of power is based on extraneous considerations or for achieving an alien purpose or an oblique motive it would amount to mala fide and colourable exercise of power. Frequent transfers, without sufficient reasons to justify such transfers, cannot, but be held as mala fide. A transfer is mala fide when it is made not for professed purpose,

such as in normal course of in public or administrative interest or in the exigencies of service but for other purpose, than is to accommodate another person for undisclosed reasons. It is the basic principle of rule of law and good administration, that even administrative actions should be just and fair. The policy of transfer should be reasonable and fair and should apply to everybody equally. A mid-term transfer effected only to accommodate another employee will be wholly mala fide and consequently liable to be quashed.”

(ii) **(1993) 4 SCC 357** in the matter of **Union of India Vs. S.L. Abbas.** In the said citation is held that the order of transfer can be questioned in a court or Tribunal only where it is passed mala-fide or where it is made in violation of the statutory provisions.

(iii) **(2009) 2 SCC 592** in the matter of **Somesh Tiwari Vs. Union of India and Others.** In para No. 16, it is observed as follows:-

“16. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two kinds - one malice in fact and the second malice in law. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the

order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal.”

(iv) **2020 SCC OnLine SC 774** in the matter of **Punjab and Sind Band and Others Vs. Durgesh Kuwar**. In the said citation, it is held as follows :-

“.....Unless an order of transfer is established to be mala-fide or contrary to a statutory provision or has been issued by an authority not competent to order transfer, the Court in exercise of judicial review would not be inclined to interfere.”

28. Learned Advocate for respondent No. 5 as regards mala-fide sought to be invoked by the applicant submitted that the mala-fide is required to be specifically pleaded and proved, which is not case in the present matter. To substantiate the said preposition, he placed reliance on citation reported in **2016 (2) Bom. C.R. 539 (Bombay High Court)** in the matter of **Murlidhar Teckchand Gandhi and Others Vs. State of Maharashtra and Others in W.P. No. 165 of 2007**. In para No. 39 it is observed as follows :-

“39. Insofar as Mr. Sathe's contention based on mala fides is concerned, it is to be noted that there are hardly any pleadings on this aspect in the petition. It is settled position is law that vague and casual allegations suggesting that a particular action was taken with an ulterior motive cannot be accepted without proper pleadings and sufficient proof. A bald assertion, in the course of arguments that the acquisition was made to

favour some party, is hardly sufficient even to investigate into the allegation of mala fides. In the absence of proper pleadings and proper material in support thereof, it is not possible to embark upon a roving enquiry into the matter. The allegation of mala fides are normally, easy to make rather than make out. Further, even the burden of proving mala fides is upon the person making the allegations and such burden, is generally quite heavy. Neither express nor implied malice can be inferred or assumed in such matters. In case of (Gulam Mustafa Vs. State of Maharashtra) 14, (1976) 1 S.C.C. 800 the Supreme Court, speaking through Krishna Iyer, J. , in the context of allegation of mala fides has observed that "it is the last refuge of a losing litigant".

29. Learned Advocate for the applicant however, in this regard submitted that what is contended by the applicant is malice in law attached to the impugned transfer order of the applicant and is to be considered according to the law laid down in the citation of the Hon'ble Apex Court reported in **(2009) 2 SCC 592** in the matter of **Somesh Tiwari Vs. Union of India and Others** (cited supra).

30. In the background of the aforesaid relevant submissions of all the parties, if the facts and documents of this case are considered, the alleged action of transfer said to have been based on the preliminary enquiry report submitted by the Additional Superintendent of Police, ACB, Aurangabad on the direction of the Superintendent of Police, ACB, Beed, whereby it is observed that the amount of Rs. 30,000/- required for trap purpose was

kept by the applicant with him till 27.12.2021, though trap failed on 24.12.2021; secondly trap dated 24.12.2021 failed due to leakage of information of such trap by some private persons and thirdly though Superintendent of Police, Aurangabad directed the applicant to register the crime on 05.01.2022., the applicant registered the crime belatedly only on 07.01.2022. In view of all these alleged lapses / negligence, irresistible inference of doubtful integrity is drawn and consequently the transfer order is issued.

31. It is true that as per the settled law, the Tribunal in its limited jurisdiction cannot probe much into the administrative reason generally. However, in this case, inference of doubtful integrity against the applicant is drawn based on one single incident. As per the report, disciplinary action is also under contemplation. That directly is likely to affect the reputation of the applicant as a Police Officer. In view of the same, it is to be seen as to whether there is any mala-fide behind passing such transfer order of the applicant.

32. Perusal of the record would show that the trap scheduled on 24.12.2021 failed, as on that date no meeting could take place between the complainant and accused and that is due to alleged

leakage of information. The said leakage sought to be attributed impliedly to the applicant. Considering whatsapp messages exchanged between the complainant and the applicant, no such irresistible inference can be drawn, as it seems that the applicant was in touch with the complainant. Moreover, in the preliminary enquiry report, it is stated that next trap was arranged on 27.12.2021 and the said procedure of trap was not materialized and the applicant and his team did not reach on the spot in time. However, prima-facie, there is nothing on record to show that the trap was rescheduled on 27.12.2021. There is on record to show that the amount of Rs. 30,000/- required for trap was returned to the complainant on 27.12.2021 and on that day itself complaint of it was lodged by the complainant to the Superintendent of Police, ACB, Beed about it. In what order those things happened is difficult to visualize. So far as the registration of crime is concerned, the documents on record would show that the applicant sought such advice from the Superintendent of Police, ACB, Aurangabad by the letter dated 31.12.2021 (Annexure A-9), whereas the complainant withdrew his complaint of corruption by addressing letter dated 05.01.2022 (Annexure A-12) to the Superintendent of Police, ACB, Aurangabad and whereas by the letter dated 06.01.2022

(Annexure A-11) addressed to the applicant he was advised to take action in accordance with departmental procedure rules and regulations and provisions of Criminal Procedure Code. Thereafter, FIR (Page No. 172 of the paper book) was registered on 07.01.2022 in the midnight at about 00.07 hrs. This will show that almost at the fag-end in the midnight of 06.01.2022 and 07.01.2022, the FIR is registered. All the above-said records said to have been maintained in ordinary course of investigation and nothing irregularity is found in maintenance of investigation record. In such circumstances, one fails to understand as to on what alleged material as discussed above, one can go to the extent of drawing inference of doubtful integrity, which is definitely likely to affect the carrier of the applicant adversely. Moreover, record shows that the disciplinary action is also contemplated against the applicant in respect of the said very facts. In such circumstances, in my considered opinion, the action of transfer of the applicant seems to be of mala-fide in nature and consequently, would be found to be not in accordance with law and definitely it is in contravention of the provisions of the transfer incorporated in Section 22N(2) of the Maharashtra Police Act. In any way, the impugned orders of transfer, prima-

facie, seem to be punitive in nature, which is required to be discouraged.

33. In view of above, in my considered opinion, the ratio laid down in para No. 16 of the case law of the Hon'ble Supreme Court in **Somesh Tiwari's** case (cited supra) would be applicable in the instant case. Hence, the impugned orders of transfer of the applicant dated 08.02.2022 (Annexure A-1) and 09.02.2022 (Annexure A-2) respectively are not sustainable in the eyes of law and are liable to be quashed and set aside.

34. Having been quashed and set aside the impugned transfer order of the applicant dated 08.02.2022, the question arises as to what would be the consequences of this order. In this regard, most specifically objection has been raised on behalf of respondent No. 5 that there is no specific prayer made by the applicant in the Original Application seeking his reposting on the post of Dy. Superintendent of Police, ACB, Beed, wherefrom he was transferred on the post of Police Inspector, Police Training School, Jalna. Learned Advocate for respondent No. 5 further submitted that also the applicant ought to have challenged the subsequent transfer order of respondent No. 5 dated 22.02.2022 (Annexure R-1), whereby the respondent No. 5 has been

transferred from Dy. Superintendent of Police, ACB, Mumbai to the post of Dy. Superintendent of Police, ACB, Beed, which post was earlier held by the applicant. According to the respondent No. 5, even if the impugned transfer order of the applicant dated 08.02.2022 (Annexure A-1) is quashed and set aside, when the respondent No. 5 has been transferred on the post held by the applicant, no order of reposting of the applicant can be issued unless the transfer order of the respondent No. 5 is dealt with.

35. Learned Advocate for the applicant, however, opposed the contentions and arguments advanced on behalf of respondent No. 5. In this regard, she submitted that there is no need for the applicant to specifically seek relief of reposting, as the reposting would be the obvious consequence of the order of transfer being quashed and set aside being illegal. She also submitted that the respondent No. 5 is subsequently transferred to the post held by the applicant, when the transfer order of the applicant was under challenge. Hence, the transfer order of respondent No. 5 will be governed by outcome of pending O.A. filed by the applicant. The respondent No. 5 from that angle is not the necessary party. To substantiate the said submissions, learned Advocate for the applicant placed reliance on following citations :-

(i) **(1992) 3 Supreme Court Cases 1** in the matter of **Shree Chamundi Mopes Ltd. Vs. Church of South India Trust Association CSI Cindod Secretariat, Madras.** In the said citation case it is held that, the effect of quashing of order is dealt with by stating that quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed.

(ii) **2021 SCC OnLine Mad 5202** in the High Court of Madras in the matter of **K. Mohana Sundaram and Others Vs. Board of Director, Rep. By its Company Secretary, Tamil Nadu Civil Supplies Corporation Limited and Others.** In the said citation case, it is held that in so far as the Government servant is concerned, it does not appear necessary for a Government servant who has been dismissed or removed from the service to specifically pray for the relief of reinstatement. It would be enough if in a petition challenging the dismissal or removal of a Government servant the said Government servant merely asks for the quashing of an order of dismissal has the effect that the Government servant is deemed to continue in service throughout the period during which the order of dismissal or removal was operative.

(iii) **(2018) 17 Supreme Court Cases 621** in the matter of **Swapna Mohanty Vs. State of Odisha and**

Others. In the said citation case, it is held as follows :-

“2. The Appellant was appointed as a Lecturer in English against the 2nd post in the Indira Gandhi (Junior) Mahavidyalaya, Nimapara (hereinafter referred to as “the College”). On 24th November, 1991, the Appellant was elevated to the 1st post of Lecturer in English due to the resignation of Chaudhury Ramakanta Dash. Respondent No.4 was appointed against the 2nd post which was held by the Appellant prior to her being appointed to the 1st post of Lecturer. The services of the Appellant were terminated on 29th July, 2001 by the Special Officer of the College. Thereafter, Respondent No.4 was appointed to the 1st post of Lecturer in English on 14th October, 2001. On 3rd August, 2002, the Appellant filed an appeal challenging the order of termination of her service.

3. The College was admitted to grant-in-aid w.e.f. 1st January, 2004. By a letter dated 7th July, 2005, the Appellant requested the Director, Higher Education to expedite the hearing of her Appeal dated 3rd August, 2002. The Director, Higher Education vide order dated 21st February, 2006 allowed the appeal and set aside the order dated 29th July, 2001 by which the Appellant’s services were terminated. The Appellant was reinstated as Lecturer in English in the 1st post on 28th February, 2006.

4. The Appellant approached the State Education Tribunal, Odisha by filing GIA Case No.120 of 2006 under Section 24-B of the Odisha Education Act, 1969 seeking a direction to the Government of Odisha and the Director, Higher Education to approve her appointment against the 1st post of Lecturer in English in the College and to release grant-in-aid w.e.f. 1st January, 2004. The State Education Tribunal by its judgment dated 3rd December, 2008 allowed GIA Case No.120 of 2006 by granting the relief prayed for. Aggrieved by the non-implementation of the directions issued by the State Education Tribunal, the Appellant filed a Writ Petition in the High Court of Odisha which was allowed by a judgment dated 25th November, 2009. The State Government was directed to implement the judgment of the State Education Tribunal in GIA Case No. 120 of 2006 within a period of six months.

5. Respondent No.4 filed GIA Case No. 36 of 2010 in the State Education Tribunal seeking approval of his appointment in the 1st post of Lecturer in English in the College. During the pendency of the said appeal, the State Government approved the appointment of the Appellant in the 1st post of Lecturer in English by an order dated 13th January, 2011 and released the grant-in-aid in favour of the Appellant. It is relevant to note that the appeal filed by the State Government against the order dated 3rd December, 2008 of the State Education Tribunal was rejected by the High Court. The Tribunal dismissed GIA Case No. 36 of 2010 filed by Respondent No.4. Respondent No.4 challenged the judgment of the State Education Tribunal in the High Court. The High Court allowed the appeal filed by Respondent No.4. Respondent No.4 was declared to be entitled to receive the grant-in-aid against the 1st post of Lecturer in English.

As regards the respondent No. 4 therein as to whether he was necessary party or not, it is observed as follows :-

“11. The other point which was found in favour of Respondent No.4 by the High Court is that there is violation of principles of natural justice which resulted in the order dated 3rd December, 2008 in GIA Case No. 120 of 2006 being void. This is for the reason that the Appellant did not implead Respondent No.4 in the said case. The subject matter of GIA Case No.120 of 2006 filed by the Appellant was approval of her appointment against the 1st post of Lecturer in English in the College. There is no doubt about the order of termination of the services of the Appellant being set aside. The said order became final when the Appeal filed by the Government was rejected by the High Court. There is no dispute that the Appellant was holding the 1st post of Lecturer in English in the College on the date of termination of her services. It was only after the termination of the services of the Appellant, Respondent No.4 was appointed to the 1 st post of Lecturer in English in the resultant vacancy. The natural consequence of the order of termination being set aside is that the Appellant has to be appointed to the 1st post of Lecturer in English in the College.

12. There is no doubt that only one post of Lecturer in English out of the two occupied by the Appellant and Respondent No.4 is admitted to grant-in-aid. The request of the Appellant was consequential to the order dated 21st February, 2006 by which she was directed to be reinstated in the 1 st post of Lecturer in English. Respondent No.4 is not a necessary party either to proceedings pertaining to the termination of services of the

Appellant or the consequential proceedings arising therefrom. A person whose presence before a forum may be necessary in order to enable it effectually and completely to adjudicate upon and settle all the questions involved in the dispute is a necessary party. A necessary party is one without whom no order can be made effectively. A proper party is one in whose absence an effective order can be made, but whose presence is necessary for complete and final decision on the question involved in the proceedings. [See:- Udit Narain Singh Malpaharia v. Additional Member Board of Revenue, Bihar & Anr.]

13. As GIA Case No. 120 of 2006 emanates from a dispute pertaining to the termination of services of the Appellant and the only dispute before the Tribunal being the grant of consequential benefits, we are of the considered opinion that Respondent No.4 was not a necessary party. We are aware of the fact that as a consequence of appointment of the Appellant in the 1st post of Lecturer in English, Respondent No.4 has to be relegated back to his original post i.e. 2nd post of English. But, as stated earlier, that is a natural consequence of the order of termination of the services of the Appellant being set aside.”

36. In view of above-said citations relied upon by the learned Advocate for the applicant, the legal position is crystal clear that once the impugned order of transfer of the applicant is quashed and set aside being not in accordance with law, as a natural legal consequences, the applicant will be entitled to be reposted on the post of Dy. Superintendent of Police, ACB, Beed i.e. his earlier place of posting, by drawing irresistible inference in favour of the applicant and necessary direction can be given to the respondents. Even if the necessary directions are not given, the consequences would follow that the respondents would be liable to repost the applicant on the post afresh from which the applicant was transferred.

37. So far as the transfer order of respondent No. 5 is concerned, admittedly it is the subsequent order on the post held by the applicant from where the applicant is transferred. This posting is done during the pendency of the O.A. Though the respondent No. 5 was transferred in place of the applicant during pendency of the present O.A., none of the parties to the O.A. at that time placed on record the said fact. In view of the same, the O.A. was decided in absence of the respondent No. 5 by the order dated 13.07.2022. The respondent No. 5 challenged the said order before the Hon'ble High Court and the Hon'ble High Court was pleased to quash and set aside the order of this Tribunal and directed this Tribunal to decide the O.A. afresh after joining the respondent No. 5 and allowing him to file his affidavit in reply. The applicant admittedly has not challenging the transfer order of the respondent No. 5 dated 22.02.2022. In view of the ratio laid down by the Hon'ble Apex Court in the case of **Swapna Mohanty Vs. State of Odisha and Others**. (cited supra), even if the transfer order of the respondent No. 5 is not challenged, when the transfer of the applicant is quashed and set aside by this Tribunal, legally and naturally the respondents have to re-accommodate the respondent No. 5 at some other suitable place. Hence, I hold that failure of the applicant to challenge the

transfer order of the respondent No. 5 is not fatal to the present proceedings. In the result, I proceed to pass the following order :-

ORDER

The Original Application No. 112/2022 is allowed in following terms :-

- (1) Impugned order of transfer of the applicant dated 08.02.2022 (Annexure A-1) issued by the respondent No. 2 i.e. the Director General of Police, Maharashtra State, Mumbai and further consequential transfer order of the applicant dated 09.02.2022 (Annexure A-2) issued by the respondent No. 3 i.e. the Director General of Police (ACB), Maharashtra State, Mumbai, whereby the applicant has been transferred from the post of Deputy Superintendent of Police (ACB), Beed to the post of Police Inspector, Police Training School, Jalna are hereby quashed and set aside as prayed for by the applicant.
- (B) The respondent Nos. 1 to 4 are directed to repost the applicant in the circumstances as above, at his earlier place of posting i.e. on the post of Deputy Superintendent of Police (ACB), Beed within a period of one month from the date of this order.
- (C) The respondent Nos. 1 to 4 are further directed as a further consequence to re-accommodate the

respondent No. 5 at some other suitable place in accordance with law.

(D) There shall be no order as to costs

PLACE : AURANGABAD.

DATE : 21.10.2022.

**(V.D. DONGRE)
MEMBER (J)**

KPB S.B. O.A. No. 112 of 2022 VDD Transfer (after remanded)