

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

**ORIGINAL APPLICATION NO. 471 OF 2021  
WITH  
ORIGINAL APPLICATION NO. 523 OF 2021  
(Subject – Transfer)**

**1. ORIGINAL APPLICATION NO. 471 OF 2021**

**DISTRICT : BEED**

**Shankar S/o Yashvant Galdhar,** )  
Age : 51 years, Occu. : Police Head Constable,) )  
(B.No. 1089), working in the office of Sub- )  
Divisional Officer Georai, District Beed. )

.... **APPLICANT**

**V E R S U S**

**1. Superintendent of Police,** )  
Beed, District Beed. )

...**RESPONDENT**

**W I T H**

**2. ORIGINAL APPLICATION NO. 523 OF 2021**

**DISTRICT : BEED**

**Munjaba s/o Namdeorao Soundermal,** )  
Age : 51 years, Occu. : Asst. Sub. Inspector (ASI)) )  
(B.No. 1135), Peth Police Station, District Beed.) )  
Presently posted at Police Station Wadvani, )  
Tq. Wadvani, District Beed. )

.... **APPLICANT**

**V E R S U S**

**1. Superintendent of Police,** )  
Beed, District Beed. )

...**RESPONDENT**

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**APPEARANCE** : Shri J.S. Deshmukh, Advocate for the  
Applicants in both the O.As.

: Shri N.U. Yadav, Presenting Officer for  
Respondent in both the O.As.

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

**DATE** : **21.07.2022.**  
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**C O M M O N - O R D E R**

1. The present Original Applications are arising out of similar facts and law, both can be disposed of by a common order.

2. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, both the Original Applications are filed challenging the impugned order of transfer to the extent of respective applicants dated 29.07.2021 (Annexure A-1 in both the O.As.) issued by the respondent i.e. the Superintendent of Police, Beed, thereby transferring the applicant in O.A. No. 471/2021 at Rural Police Station, Majalgaon, Tq. Majalgaon, Dist. Beed from the office of Sub-Divisional Officer (S.D.P.O.) Georai, Tq. Georai, Dist. Beed and the applicant in O.A. No. 523/2021 at Police Station, Wadvani, Tq. Wadvani, Dist. Beed from the Peth Beed Police Station, Beed, Dist. Beed.

3. The facts in brief giving rise to these Original Applications can be stated as follows :-

**O.A. No. 471/2021**

(i) The applicant is working on the post of Police Head Constable (B. No. 1089) in the office of the Sub-Divisional Officer (S.D.P.O.) Georai, Tq. Georai, Dist. Beed since 09.09.2020 as per the joining report dated 09.09.2020 (Annexure A-3). By the earlier transfer order dated 07.09.2020 (Annexure A-2), the applicant was transferred from Police Station Talwada, Dist. Beed to the office of Sub-Divisional Officer (S.D.P.O.) Georai, Tq. Georai, Dist. Beed. However, within 10 months of his said posting, the applicant has been transferred by the impugned transfer order dated 29.07.2021 (Annexure A-1) stating administrative ground. It is mid-tenure transfer order and being issued in violation of the statutory provisions of Section 22N(1) of the Maharashtra Police Act. The applicant's record in fact is unblemished and has not received any show cause notice or no any enquiry is pending against him and his work is satisfactory.

**O.A. No. 523/2021**

The applicant is working on the post of Police Head Constable (B. No. 1135). By the earlier transfer order dated

11.09.2020 (Annexure A-3), the applicant was transferred from Police Control Room, Beed Dist. Beed to Peth Police Station, Dist. Beed. However, within 10 months of his said posting, the applicant has been transferred by the impugned transfer order dated 29.07.2021 (Annexure A-1) stating administrative ground. It is mid-tenure transfer order and being issued in violation of the statutory provisions of Section 22N(1) of the Maharashtra Police Act. The applicant's record in fact is unblemished and has not received any show cause notice or no any enquiry is pending against him and his work is satisfactory.

(ii) In these circumstances, the impugned order of transfer dated 29.07.2021 (Annexure A-1 in both the O.As.) to the extent of the respective applicants is not legal and proper and the same is liable to be quashed and set aside. Hence, the present Original Applications.

4. The affidavit in reply on behalf of respondent in O.A. No. 471/2021 is filed by one Shri Umashankar S/o Manmath Kasture working as the Deputy Superintendent of Police (Home), Beed, Dist. Beed, thereby he denied all the adverse contentions raised in the O.A. and sought to justify the impugned order of

transfer to the extent of the present applicant contending that the said impugned order of transfer is issued in view of the G.R. dated 23.04.2010 (Annexure R-1), as the applicant has completed more than 12 years in one taluka i.e. at Georai Taluka as per the relevant abstract showing his posting at Annexure R-2. The said transfer order is issued on administrative ground, which is legal and proper. There is no violation of provisions of Section 22N of the Maharashtra Police Act and before issuance of the said transfer order, the respondents issued requisite letter dated 22.04.2021 (Annexure R-3) communicating the guidelines for transfer to such of the police officials, who are liable to be transferred on completion of tenure, as well as, other legitimate grounds such as completion of more than 12 years' service in the same Taluka. Moreover, the memorandum dated 25.08.2021 (Annexure R-4) is also issued giving direction to the concerned police officers, who failed to relieve the applicant in spite of issuance of the transfer order. In these circumstances, there is no merit in the contentions raised by the applicant and therefore, the present Original Application is liable to be dismissed.

5. The affidavit in rejoinder is filed by the applicant in O.A. No. 471/2021, thereby denying all the adverse contentions

raised in the affidavit in reply and further placed reliance on the Government Circular dated 01.07.2015 (page No. 45 of the paper book), thereby issuing guidelines regarding transfer of the police personnels after incorporation of transfer provisions in the Maharashtra Police Act by amending the Maharashtra Police Act in 2015.

6. The affidavit in reply on behalf of respondent in O.A. No. 523/2021 is filed by one Shri Sheshrao s/o Aabaji Udar, working as the In-charge Deputy Superintendent of Police (H.Q.), Beed, Dist. Beed, thereby he denied all the adverse contentions raised in the O.A. and sought to justify the impugned order of transfer to the extent of the present applicant contending that the said impugned order of transfer is issued in view of the G.R. dated 23.04.2010 (Annexure R-1), as the applicant has completed more than 12 years in one taluka i.e. at Beed Taluka as per the relevant abstract showing his posting at Annexure R-2. The said transfer order is issued on administrative ground, which is legal and proper. There is no violation of provisions of Section 22N of the Maharashtra Police Act. In these circumstances, there is no merit in the contentions raised by the applicant and therefore, the present Original Application is liable to be dismissed.

7. I have heard the arguments advanced at length by Shri J.S. Deshmukh, learned Advocate for the applicants in both the O.As. on one hand and Shri N.U. Yadav, learned Presenting Officer for the respondents on the other hand in both the O.As.

8. Perusal of the impugned transfer dated 29.07.2021 (Annexure A-1 in both the O.As.) would show that thereby in all 308 police officials in the cadre of Constabulary are being transferred and the name of the applicant in O.A. No. 471/2021 in the said list is at Sr. No. 27 and applicant in O.A. 523/2021 is at Sr. No. 28. Against the name of the applicants, reason is mentioned as "Administrative Reason". In the introductory part, it is mentioned that as per the provision of Section 22N (2) of the Maharashtra Police Act, the requisite Police Establishment Board in the said district was constituted. The transfer orders of police officials, who are due for transfer as per the G.Rs. dated 24.04.2010 and 29.07.2021 are issued.

9. In order to show the compliance of the provisions relating to transfer under Maharashtra Police Act, 1951, the respondents have placed on record letter dated 22.04.2021 (Annexure R-3 in O.A. No. 471/2021) issued by the respondent in this regard to all the establishment in the said district and the minutes of the

requisite Police Establishment Board dated 29.07.2021. As per the said minutes, the Police Officials, who have completed five years of service, as well as, Police Officials who have completed tenure of more than 12 years in one Taluka in the District were considered for transfer as per the proposal and counseling was done and the transfer order is issued.

10. In view of above, it is evident that the respondent has treated the applicants due for transfer having been completed 12 years' service in one Taluka i.e. at Georai Taluka and Beed Taluka respectively in Beed District in view of the G.R. dated 23.04.2010 (Annexure R-1, page Nos. 34 to 38 of the paper book in O.A. No. 471/2021).

11. Learned Advocate for the applicants however, in this regard strenuously submitted that the Chapter II-A in Maharashtra Police Act consisting of Section 22B to 22T was inserted in the Maharashtra Police Act, 1951 by Mah. 24 of 2014. There is further amendment in the said Chapter also by Mah. 11 of 2015. Thereafter, general guidelines were issued regarding transfer by Department of Home, Government of Maharashtra by issuing Circular dated 01.07.2015 (page No. 45 of the paper book in O.A.



No. 471/2021). He further invited my attention to the provisions of Article 162 of the Constitution of India, which is as follows:-

*“162. Extent of executive power of State Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws; Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by the Constitution or by any law made by Parliament upon the Union or authorities thereof. Council of Ministers.”*

12. In view of the provisions of Article 162 of the Constitution of India, according to him the provisions of amended provisions relating to transfer of the police officials inserted in the Maharashtra Police Act and the Government Circular dated 01.07.2015 thereof would prevail over the earlier G.R. dated 23.04.2010 (Annexure R-1 in both the O.As.) relied upon by the respondent. According to him, the said G.R. was applicable only prior to the amendment in the Maharashtra Police Act as regards transfers of the police officials.

13. Learned Presenting Officer on the other hand submitted that the said G.R. dated 23.04.2010 is still in force, as the same is not being declared void on any count and therefore, the same

is relevant at least to the extent of the provisions, which are not inconsistent with the provisions laid down into the transfer of the Police officials inserted in the Maharashtra Police Act.

14. After having considered the rival submissions, in my considered opinion, the provisions incorporated in Chapter II-A of the Maharashtra Police Act consisting Section 22B to 22T would prevail to consider the validity of the transfer orders. In view of this, amended provisions of Circular dated 01.07.2015 would also be relevant, as it is issued in view of the amendment in the Maharashtra Police Act relating to the transfer of the police officials. There is no reference to G.R. dated 23.04.2010 relied upon by the applicant, which could have been found place while dealing with the transfer of the police officials in the background of the amendment in the Maharashtra Police Act. However, there is no reference of the said G.R. dated 23.04.2010. Moreover, in view of the provisions of Article 162 of the Constitution of India, as reproduced earlier would definitely be applicable in the present case in order to consider the overriding effect of the amended provisions relating to transfer under Maharashtra Police Act and requisite Government Circular dated 01.07.2015 (page No. 45 in O.A. No. 471/2021) issued by the Department of Home, State of Maharashtra. There is reference to

the Maharashtra Amended Act Mah. 11 2015 in the said Government Circular dated 01.07.2015.

15. In view of above, in my considered opinion, the general, mid-term and mid-tenure transfers of the police officials will be governed in accordance with the amended provisions incorporated in the Maharashtra Police Act as discussed herein above. Proviso to Section 22N(1) specifically empowers the State Government to transfer the police officials mid-tenure on the grounds specified in the said proviso and as per the Section 22N (2) of the said Act, power vests in competent authority to effect the mid-term transfer on the grounds in addition to the grounds mentioned in the sub-section (1) proviso of Section 22N, in exceptional circumstances, in public interest and on account of administrative exigency. The case of the applicant does not fall either under the proviso to sub-section (1) of Section 22N or sub-section (2) of Section 22N. On that count also, the impugned transfer order to the extent of the present applicant is not in accordance with the law and in fact, it is in contravention of the same. Hence, I hold that the impugned transfer order dated 29.07.2021 (Annexure A-1 in both the O.As.) to the extent of respective applicants is not legal and proper and the same is liable to be quashed and set aside.

16. Moreover, in the circumstances as above, in my considered opinion, after insertion of the provisions relating to transfer of Police Officials in the Maharashtra Police Act reference to erstwhile G.R. dated 23.04.2010 would be unwarranted. In view of the same, even if the impugned transfer order to the extent of the applicant is issued in concurrence of the requisite Police Establishment Board, the same would not be held to be valid in the eyes of law and therefore, the same is required to be quashed and set aside. I therefore, proceed to pass following order :-

**ORDER**

The Original Application Nos. 471/2021 & 523/2021 are allowed in following terms :-

- (A) The impugned order of transfer to the extent of the respective applicants dated 29.07.2021 (Annexure A-1 in both the O.As.) issued by the respondent i.e. the Superintendent of Police, Beed, thereby transferring the applicant in O.A. No. 471/2021 at Rural Police Station, Majalgaon, Tq. Majalgaon, Dist. Beed from the office of Sub-Divisional Officer (S.D.P.O.) Georai, Tq. Georai, Dist. Beed and the applicant in O.A. No. 523/2021 at Police Station, Wadvani, Tq. Wadvani,

Dist. Beed from the Peth Beed Police Station, Beed,  
Dist. Beed are hereby quashed and set aside.

(B) The respondent is directed to repost the applicants at their earlier place of postings within a period of one month from the date of this order.

(C) There shall be no order as to costs.

**PLACE : AURANGABAD.**  
**DATE : 21.07.2022.**

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

**KPB** S.B. O.A. Nos. 471 with 523 both of 2021 VDD Transfer