

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

**ORIGINAL APPLICATION NO. 540 OF 2021
(Subject – Transfer)**

DISTRICT : AURANGABAD

Bhujang S/o Vitthalrao Godbole,)
Age : 37 years, Occu. : presenting)
Working as Police Inspector, Anti-)
Terrorist Squad, Aurangabad.)
R/o : Flat No. 28, D-9, Ranjanvan)
Society, Hudco, Aurangabad,)

.... **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through its Additional Chief Secretary,)
Home Department, 2nd Floor,)
2nd Floor, Main Building,)
Mantralaya, Mumbai-32.)
2. **The Additional Director General of Police,)**
Maharashtra State Police Head Quarter,)
Shahid Bhagatsing Road, Culaba,)
Mumbai-400001.)
3. **The Additional Director General of Police,)**
Anti-Terrorist Squad, Nagpada,)
Mumbai- 400 008.)
4. **The Superintendent of Police,)**
Head Quarter, Anti-Terrorist Squad,)
Nagpada, Mumbai-400 008.)

...RESPONDENTS

APPEARANCE : Shri V.B. Wagh, Advocate for the Applicant.

: Shri V.R. Bhumkar, P.O. for Respondents.

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

DATE : **15.12.2022.**

ORDER

1. Challenge in this Original Application is made to the impugned transfer order of the applicant dated 31.08.2021 (Annexure A-1) issued by the respondent No. 2 i.e. the Additional Director General of Police, Mumbai by invoking the provisions under Section 22N(2) of the Maharashtra Police Act with approval of the Police Establishment Board No. 2, by which the applicant has been transferred from Anti-Terrorist Squad to Protection of Civil Rights department on administrative ground.

2. The facts in brief giving rise to this application can be stated as follows :-

(a) Initially the applicant was appointed as Police Sub-Inspector on 01.09.2009. He was promoted as Assistant Police Inspector on 04.03.2014. Thereafter, as per the order dated 23.02.2021 (Annexure A-2), the applicant was further promoted as Police Inspector and was posted at Anti-Terrorist Squad, Revenue Cadre, Kokan-2. He joined on the said post as per the joining report dated 12.03.2021 (Annexure A-3). Since then he was working on that post. However, within a period of five months, the applicant was transferred therefrom by the impugned transfer order dated

31.08.2021 (Annexure A-1) issued by the respondent No. 2 to Protection of Civil Services Branch and pursuant to that, the respondent No. 4 i.e. the Superintendent of Police, Anti-Terrorist Squad, Mumbai relieved the applicant as per the communication / order dated 06.09.2021 (Annexure A-4).

(b) It is contended that the impugned transfer order of the applicant dated 31.08.2021 (Annexure A-1) is issued in contravention of the provisions of Section 22J(2)(b) of the Maharashtra Police Act, as there was no recommendation of Civil Services Board. In spite of that, the respondent No. 3 has effected the transfer the applicant before completion of his normal tenure. It is mid-tenure and mid-term transfer order. In fact, the impugned transfer order dated 31.08.2021 (Annexure A-1) was not served upon the applicant and what was served upon the applicant was relieving order / communication dated 06.09.2021 (Annexure A-4) issued by the respondent No. 3.

(c) It is further contended that the normal tenure of the applicant on the post of Police Inspector is of two years at a Police Station or Branch. No exceptional circumstances, administrative exigency or public interest is shown as

contemplated under Section 22N(2) of the Maharashtra Police Act while issuing the impugned transfer order of the applicant. In view of the same, the impugned transfer order of the applicant is issued with mala-fide exercise of powers. Hence, it is liable to be quashed and set aside. Hence, this Original Application.

3. The affidavit in reply is filed on behalf of respondent No. 2 by one Shri Anil Parasram Ade, working as the In-charge Assistant Commissioner of Police(Admin), in the office of Commissioner of Police, Aurangabad city (page Nos. 59 to 96 of the paper book) and the affidavit in reply filed on behalf of respondent Nos. 3 and 4 by one Shri Dilip Fakirba Ingle, working as Police Inspector, Anti-Terrorist Squad, Aurangabad Unit, Aurangabad (Page Nos. 97 to 118 of the paper book). In both the affidavits in reply adverse contentions raised by the applicant in the O.A. are denied. In nutshell in both the affidavits in reply, it is specifically stated that the impugned transfer order of the applicant is issued in accordance with law by complying the provisions of Section 22N(2) of the Maharashtra Police Act. A crime bearing C.R. No. 32 of 2020 under Section 420, 506, 34 of IPC was registered against the applicant and others at Police Station Nanded Rural on or about 16.01.2020 and in view of that

by placing his case before the requisite Police Establishment Board and as per the report in that regard dated 03.06.2021 (page No. 77 & 78 of the paper book) submitted by the Superintendent of Police, Anti-Terrorist Squad, Aurangabad to the respondent No. 2 and in turn in view of submission of report dated 11.06.2021 (page No. 75 of paper book) by the respondent No. 2, the Police Establishment Board by taking into consideration the report dated 11.06.2021 approved the transfer of the applicant in accordance with law as per the minutes of the said Board (page No. 76 of the paper book). In view of that, the impugned transfer order of the applicant is legal and proper and the O.A. is liable to be dismissed being devoid of merits.

4. The applicant has filed rejoinder affidavit and denied the contentions raised in the affidavits in reply and more particularly contended that the crime registered against the applicant was unconnected with discharge of his duties and it was a private case. Hence, it is reiterated that the impugned transfer of the applicant is mala-fide and it is liable to be quashed and set aside.

5. I have heard the arguments advanced at length by Shri V.B. Wagh, learned Advocate for the applicant on one hand and

Shri V.R. Bhumkar, learned Presenting Officer for the respondents on the other hand.

6. Considering the facts and evidence of the case, following provisions of law from Maharashtra Police Act would be relevant.

Hence, those provisions are reproduced as under :-

(i) As per Section 2(6A) of the Maharashtra Police Act definition of 'General Transfer' is as follows :-

“(6A) “General Transfer”, which means posting of a Police Personnel in the Police Force from one post, office or Department to another post, office or Department in the month of April and May of every year after completion of normal tenure as mentioned in sub-section (1) of Section 22N.”

(ii) As per Section 2(6B) of the Maharashtra Police Act, mid-term transfer means :-

“(6B) “Mid-term Transfer” means transfer of a Police Personnel in the Police Force other than the General Transfer;”

(iii) As per Section 22N of the Maharashtra Police Act, normal tenure of Police Personnel and Competent authority 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) for Police Officers of the rank of Police Sub-Inspector, Assistant Police Inspector and Police Inspector a normal tenure shall be of two years at a Police Station or Branch, four years in a District and eight years in a Range, however, for the Local Crime Branch and Special Branch in a District and the Crime Branch and Special Branch in a Commissionerate, a normal tenure shall be of three years.”

(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:-

Police Personnel

Competent Authority

(a) -----

(b) -----

(c) *Police Personnel up to the rank of Police Establishment
Police Inspector for transfer out of Board No. 2;
the Respective Range or
Commissionerate or Specialized Agency.”*

7. In view of above, as per the provisions of Section 22N(1)(c) normal tenure of the applicant in the specialized branch of Anti-Terrorist Squad would be of two years. Admittedly, the applicant is transferred from Anti-Terrorist Squad Aurangabad Unit within a period of six months of joining there. He joined in the said Branch as Police Inspector on 12.03.2021 and was transferred therefrom by the impugned order dated 31.08.2021 (Annexure A-1). Hence, the impugned transfer order of the applicant is mid-term, as well as, mid-tenure transfer order.

8. It is undisputed position that the provisions for transfer of Police officials were incorporated by introducing Chapter II-A in Maharashtra Police Act consisting of Section 22B to 22T by Mah. 24 of 2014 w.e.f. 01.02.2014 and further some amendments were brought in the said Chapter also as per Mah. 11 of 2015 w.e.f. 16.02.2015. The said provisions of transfer were introduced in view of the direction given by the Hon'ble Apex Court in the matter of Sanjay S/o Gulabroa Deshmukh V. State of Maharashtra and Ors., 2016 (4) Bom.C.R. 284 (AB)(DB).

9. Learned Advocate for the applicant strenuously urged before me that the impugned transfer order is mala-fide one as it is issued in the background of the private criminal case in respect of property dispute pending against the applicant and others. In the pleadings, it is contended that the impugned transfer order is issued without approval of the requisite Police Establishment Board. In the pleadings some contradictory stands have been taken stating that the normal tenure of his post is of two years, three years and four years. However, considering the facts of the present case, the normal tenure of the applicant is of two years, as he was working in Specialized Agency / Branch of Anti-Terrorist Squad, Aurangabad Unit. In view of that, the case of the applicant would be covered for tenure laid down under Section 22N(1)(c), which is reproduced hereinabove. There is no merit in the contentions raised by the applicant that the normal tenure of his post may be three years or four years. Hence, the said submissions in the pleadings will have to be discarded.

10. Upon perusal of the record and more particularly documents annexed with the affidavit in reply filed on behalf of respondent No. 2, it is evident that the minutes of the requisite

Police Establishment Board are produced at page No. 76 of the paper book. As per the said minutes, it appears that the said board has considered the report dated 11.06.2021 (page No. 75 of the paper book) submitted by the respondent No. 2. The said report dated 11.06.2021 is based on the initial report dated 03.06.2021 (page Nos. 77 and 78 of the paper book) submitted by the Superintendent of Police, Anti-Terrorist Squad, Aurangabad to the respondent No. 2. It is, however, submitted by the learned Advocate for the applicant that the minutes of Police Establishment Board No. 2 is not signed by one member viz. Anand Limaye, Additional Chief Secretary, Home Department. It is, however, signed all other members. Irregularities of non-signing of the minutes cannot be said to be fatal, as nothing is shown on behalf of the applicant that the said minutes cannot be acted upon being in contravention of any rules or regulations. The said minutes are signed by other Members. In view of the same, it is evident that the respondent No. 2 said to have issued impugned transfer order dated 31.08.2021 by complying with the provisions of Section 22N(2) of the Maharashtra Police Act.

11. It is true that the criminal case against the applicant is directly unconnected with discharge of his duties. However, it is

alleged that the applicant was using his authority as Police Inspector to frustrate the claim of the complainant of receiving money back in respect of transaction of agreement to purchase of property. In the circumstances, Police Establishment Board said to have received the said report in that regard and this Tribunal in its limited jurisdiction would not be empowered to way the administrative exigency. It was for the applicant to show that the impugned transfer order is mala-fide. However, no material is produced by the applicant on record to show that in fact the impugned transfer order is mala-fide. It is evident that allegations made in FIR against the applicant can be said to be touching to the public interest to some extent.

12. Learned Advocate for the applicant placed reliance on the decision of the co-ordinate bench of this Tribunal at Mumbai dated 11.03.2022 in O.A. No. 29 of 2022 in the matter of Mahesh Vasant Shirao Vs. The State of Maharashtra and Anr. In the said citation case, the transfer of the applicant therein was issued in the background of matrimonial dispute between him and his wife. In view of the same, in my humble opinion, the circumstances involved therein are altogether different than the facts of the present case. The dispute between husband and wife cannot be said to be touching to the public interest. However,

offence of cheating and using clout of the post as alleged in the present case is altogether different case.

13. He also placed reliance on the decision of this Tribunal at Mumbai in O.A. 268/2018 in the matter of Shri Yogesh Atmaram Deore Vs. The Commissioner of Police (Railways), Mumbai. In the said case admittedly, there was no sanction from Police Establishment Board for mid-term transfer more particularly in view of provisions of Section 22N(2) of the Maharashtra Police Act. That is not the case in hand. Hence, the view taken in the said citation case also would not be applicable in the present case.

14. Learned Advocate for the applicant further placed reliance on the decision of this Tribunal at Mumbai in O.A. No. 551/2018 decided on 21.12.2018 in the matter of Rajendra V. Manvar Vs. The Superintendent of Police, Sangli. He also placed reliance on decision of this Tribunal at Mumbai in O.A. No. 49/2022 in the matter of Patangrao Shamrao Renushe Vs. The State of Maharashtra and Ors. decided on 11.08.2022. However, in all these cases there was no compliance of recommendation of Police Establishment Board. The said citations would also not be applicable in the present O.A.

15. In totality of circumstances as above, in my opinion, the applicant has failed to show any mala-fide behind issuance of impugned transfer order dated 31.08.2021 (Annexure A-1). Record would show that the impugned order of transfer of the applicant is issued by complying the provisions of Section 22N(2) of the Maharashtra Police Act in it's proper sense by seeking approval of Police Establishment Board No. 2. In view of the same, I find no merit in the contentions raised on behalf of the applicant. The present Original Application is devoid of merits and the same is liable to be dismissed. Hence, the following order:-

ORDER

The Original Application No. 540 of 2021 stands dismissed with no order as to costs.

PLACE : AURANGABAD.

DATE : 15.12.2022.

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

KPB S.B. O.A. No. 540 of 2021 VDD Transfer