

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.752 OF 2021
(Sub:-Transfer)**

DISTRICT: - PARBHANI

Ramesh s/o Narayan Swami,)
Age: 53 years, Occu. Service)
as Police Inspector,)
C/o. Office of Police Control Room Parbhani)
R/o. Shriwas Apartment Flat No.302,)
Vishal Nagar, Nanded, Dist. Nanded.)
Mob. 7350016707)..**APPLICANT**

V E R S U S

1. **The Secretary,**)
Home Department Government of)
Maharashtra, Mantralaya Mumbai.)
2. **The Director General of Police,**)
Maharashtra State, Mumbai,)
Shahid Bhagatsingh Marg,)
Kulaba Mumbai.)
3. **The Dy. Inspector General of Police,**)
Nanded Range, Nanded, Kautha,)
Latur Road, Nanded, Dist. Nanded.)
4. **The Superintendent of Police,**)
Parbhani, Dist. Parbhani.)
5. **Sanjay s/o Ramchandra Karnur,**)
Age: Major, Occu: Service (P.I.).)
Police Station Manwath, Tq. Manwath,)
Dist. Parbhani.)..**RESPONDENTS**

APPEARANCE : Shri D.T. Devane, learned Advocate for
the applicant.

: Shri I.S. Thorat, learned Presenting
Officer for the respondents.

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

DATE : **20.09.2022**

ORDER

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 this Original Application is filed challenging the impugned transfer order of the applicant dated 25.07.2021 (Annex. 'A-5') issued by the respondent No.4 i.e. the Superintendent of Police, Parbhani, Dist. Parbhani, thereby transferring the applicant, who was working as Police Inspector at Police Station, Manwat to Control Room, Parbhani and also challenging the consequential transfer order of the respondent No.5 i.e. Sanjay Ramchandra Karnur dated 07.10.2021 (Annex. 'A-9') also issued by the respondent No.4 to the extent of posting of the respondent No.5 at Police Station, Manwat in place of applicant.

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

(i) The applicant is working on the post of Police Inspector in police department. By earlier transfer order dated

08.03.2019, the applicant was transferred from Control Room, Parbhani to Manwat Police Station. The applicant joined at the said Manwat Police Station and worked there till January, 2020. In the month of January, 2020 by the oral order of the respondent No.4, the applicant was posted back to Control Room Parbhani. The applicant joined there and continued to work. Thereafter, the respondent No.4 issued transfer order dated 16.11.2020 (Annex. 'A-1'), temporarily transferred him to Police Station Manwat. Later on regular transfer order dated 05.12.2020 (Annex. 'A-2') came to be issued confirming the transfer of the applicant at Manwat Police Station as per recommendation of the District Police Establishment Board on administrative grounds. Since then the applicant is working at Manwat Police Station as Police Inspector. His work was satisfactory. There was no complaint against him.

(ii) It is further submitted that while the applicant was working at Manwat Police Station, the Sub-Divisional Police Officer, Selu Dist. Parbhani issued order dated 19.01.2021 (part of Annex. 'A-3' collectively) transferring Police Naik buckle No.1121 Shri G.L. Chavan from Police Station, Manwat to Sub-Divisional Police Officer, Selu as RTPC and

directed the applicant to relieve Police Naik G.L. Chavan. In order to obey the order of the higher authority of Sub-Divisional Police Officer, the applicant relieved the said Police Naik Shri G.L. Chavan on 20.01.2021 from Manwat Police Station by order dated 21.01.2021 (part of Annex. 'A-3' collectively).

(iii) It is further submitted that in view of some complaint, trap of Anti Corruption took place on police officer who was working as S.D.P.O at Selu and against the Police Naik Shri G.L. Chavan on 23.07.2021. In view of the same, the respondent No.4 i.e. the Superintendent of Police, Parbhani visited the Police Station, Selu for enquiry on 24.07.2021 at 5.00 p.m.. The applicant was called there through Control Room, Parbhani. The applicant reported at Police Station, Selu at 7.00 p.m.. The applicant was asked as to why he relieved Police Naik Shri G.L. Chavan as RTPC to the office of Sub-Divisional Police Officer, Selu? The applicant submitted that only to obey the order of the Sub-Divisional Police officer, Selu, he relieved the said Police Naik Shri G.L. Chavan. The respondent No.4 got angry on the applicant upon that reply and abused him and ordered the applicant to join at Police Control Room, Parbhani very next day i.e. on 25.07.2021.

Station diary entry in that regard was made on 25.07.2021 at Police Station, Selu (Annex. 'A-4').

(iv) The applicant, thereafter, joined his duty at Police Control Room, Parbhani on 26.07.2021, in view of the order dated 25.07.2021 (Annex. 'A-5') issued by the respondent No.4 mentioning the default committed by the applicant. By the said order dated 25.07.2021 (Annex. 'A-5'), the applicant's Head Quarter was kept at office of Sub Divisional Police Officer, Jintur. The applicant, accordingly, reported at Jintur by joining report dated 26.07.2021 (Annex. 'A-6').

(v) It is further contended that the said impugned order of transfer of the applicant dated 25.07.2021 (Annex. 'A-5') is issued only with an intention to harass the applicant. The applicant has not committed any default while sending Police Naik Shri G.L. Chavan to the office of S.D.P.O. Selu as he did it only to obey the order of his higher authority. The applicant is not concerned with the trap of Anti Corruption which took place on S.D.P.O., Selu and the said Police Naik Shri G.L. Chavan. More than four months have passed. The impugned temporary transfer order of the applicant is still continued. As per the previous order of transfer dated 05.12.2020 (Annex. 'A-2'), the applicant was entitled to

continue the posting at Manwat Police Station for requisite tenure. The impugned order of transfer of the applicant is wrong and illegal. Thereafter, by subsequent order dated 07.10.2021(Annex. 'A-9'), the respondent No.5 has been transferred to Manwat Police Station in place of the applicant. Thereby depriving the applicant of his re-posting at Manwat Police Station. Hence, the said impugned order of transfer of the respondent No.5 is also wrong and illegal. Both the impugned orders are passed without compliance of requisite provision of Section 22N of Maharashtra Police Act. Hence this application.

3. The application is resisted by filing affidavit-in-reply of one Jayant Meena S/o Narayanlal Meena on behalf of the respondent No.4, thereby he denied all the adverse contentions raised in the Original Application.

(i) It is specifically submitted that the applicant was aware of the fact that the Police Official can be transferred from one place to other place in District by the Superintendent of Police, who is administrative head in the district and therefore, the applicant was not supposed to follow any orders being given by any subordinate of the Superintendent of Police in that regard. The applicant committed default by

relieving Police Naik Shri G.L. Chavan by order dated 20.01.2021 from Manwat Police Station for joining in the office of S.D.P.O., Selu on the direction of S.D.P.O., Selu as per his order dated 19.01.2021, which was totally wrong.

(ii) It is further submitted that it is a fact that the F.I.R. No.233/2021 was registered at Selu Police Station on 24.07.2021 for the offence punishable under Section 7 of Prevention of Corruption Act, 1988 against Police Naik Shri G.L. Chavan and S.D.P.O Rajendra Ramkaran Pal, who were trapped in Anti Corruption raid. Considering the gravity of the matter, this respondent visited Police Station, Selu. During the said visit, he noticed the order of S.D.P.O. dated 19.01.2021 (part of Annex. 'A-3' collectively). The applicant was called and was sought explanation from him. The applicant did not give satisfactory answer about relieving the Police Naik Shri G.L. Chavan.

(iii) Apart from that, several illegal activities were being carried out in the jurisdiction of Manwat Police Station in the tenure of the applicant. Articles were published in local newspaper against the inefficient working of the said police station. In view of that, vide order dated 04.06.2021 (Annex. 'R-2'), this respondent directed S.D.P.O., Jintur to carry out

enquiry and submit report. Considering the inefficient working of the applicant and serious defaults at his hands, the applicant was removed from the charge of Manwat Police Station and was attached to Control Room vide impugned order dated 25.07.2021 (Annex. 'A-7'). It was not the intention of this respondent to harass the applicant by issuing the said order. There were also allegations against the applicant of faulty and belated investigation in some crimes. Preliminary enquiry was carried out in that matter and report dated 29.09.2021 (Annex. 'R-3') was submitted to the respondent No.3 i.e. the Deputy Inspector General of Police, Nanded Range, Nanded. Moreover, without order of this respondent, the applicant had relieved three police officials including the Police Naik Shri G.L. Chavan from Manwat Police Station to S.D.P.O., Selu. Preliminary enquiry was carried out in that matter and the applicant was found at default. This respondent forwarded the said default report dated 13.11.2021 (Annex. 'R-4') to the respondent No.3. Further the S.P. Office, Parbhani and Local Crime Branch, Parbhani were required to take action against the illegal activities carried out in the jurisdiction of Manwat Police Station during the tenure of the applicant as several crimes

were registered at Manwat Police Station. Default report dated 03.02.2022 (Annex. 'R-5') was submitted to the respondent No.3 in that regard.

(iv) It is further submitted that during tenure of the applicant at Police Station, Mudkhed, Dist. Nanded, the applicant was found having committed default in handling investigation of Crime No.68/216 and in that regard vide order dated 20.04.2019 (Annex. 'R-6'), the applicant was punished withholding his annual increment for one year. While working at said Mudkhed Police Station, the applicant was also found to have committed default in the investigation in another Crime No.35/2016, for which the respondent No.3 had issued punishment order dated 12.07.2021 (Annex. 'R-7') of no increment in salary for three years.

(v) In the circumstances, it is contended that the applicant is having checkered history of dereliction of duty and in view of the said default report, the impugned order of transfer of the applicant was issued which is legal and proper. Therefore, the applicant is liable to be dismissed.

4. The applicant filed affidavit-in-rejoinder denying all the adverse contentions raised in the affidavit-in-reply and reiterating the contentions raised in the application. It is

specifically submitted that the incidents quoted in the affidavit-in-reply are not the reason beyond passing the impugned transfer order of the applicant.

5. I have heard at length the arguments advanced by Shri D.T. Devane, learned Advocate for the applicant on one hand and Shri I.S. Thorat, learned Presenting Officer representing the respondents on other hand.

6. After having considered the rival pleadings, annexures filed by the both the parties and submissions made, it is evident that as on the date of impugned transfer order of the applicant dated 25.07.2021 (Annex. 'A-5'), the applicant was working on the post of Police Inspector at Manwat Police Station. By the impugned transfer order, he is transferred from Manwat Police Station to Police Control Room, Parbhani. By the impugned transfer order dated 25.07.2021 (Annex. 'A-5'), the applicant has been transferred in view of the default report to Police Control Room, Parbhani till further orders and his Head Quarter is kept as the office of S.D.P.O., Sub-Division, Jintur. The applicant joined at transferred place on 26.07.2021.

7. The post of Police Inspector comes in the category of “Constabulary” which is defined under Section 2(4A-1) of the Maharashtra Police Act, which is as follows:-

“2(4A-1) “Constabulary” means Police Constable, Police Naik, Police Head Constable and Assistant Sub-Inspector.”

In terms of Section 22N(1) (b), the normal tenure of Police Constabulary will be of five years at one place of posting. The applicant is working at Manwat Police Station since 16.11.2020, when by order dated 16.11.2020 (Annex. ‘A-1’) issued by the respondent No.4 i.e. the Superintendent of Police, Parbhani the applicant is temporarily transferred, whose name is at Sr.No.1 from Police Control Room, Parbhani to Police Station, Manwat. The said temporary transfer order dated 16.11.2020 (Annex. ‘A-1’) was regularized by the respondent No.4 by subsequent order dated 05.12.2020 (Annex. ‘A-2’). Therefore, the applicant continued to work at Police Station, Manwat till his transfer from Manwat Police Station to Police Control Room, Parbhani by impugned order dated 25.07.2021 (Annex. ‘A-5’). In view of the same, the applicant before issuance of impugned transfer order was working at Manwat Police Station as Police Inspector from 16.11.2020 to 25.07.2021 i.e. for the period of eight and half

months. The impugned transfer order is dated 25.07.2021. In view of the same, it is mid-tenure and mid-term transfer order. Therefore, the said transfer will be governed by the provisions of proviso to Section 22N(1) and 22N(2) of the Maharashtra Police Act which reproduced as follows:-

“22N. Normal tenure at 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) for Police Personnel of and above the rank of Deputy Superintendent of Police or Assistant Commissioner of Police a normal tenure shall be of two years at one place of posting;

(b) for Police Constabulary a normal tenure shall be of five years at one place of posting;

(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) for Police Officers of the rank of Police Sub-Inspector, Assistant Police Inspector and Police Inspector a normal tenure shall be of six years at

Commissionerates other than Mumbai, and eight years at Mumbai Commissionerate;

(e) for Police Officers of the rank of Police Sub-Inspector, Assistant Police Inspector and Police Inspector in Specialized Agencies a normal tenure shall be of three years.

The Competent Authority for the general transfer shall be as follows, namely:-

<i>Police Personnel</i>	<i>Competent Authority</i>
<i>(a) Officers of the Indian Police Service</i>	<i>Chief Minister;</i>
<i>(b) Maharashtra Police Service Officers of and above the rank of Deputy Superintendent of Police.</i>	<i>Home Minister;</i>
<i>(c) Officers up to Police Inspector</i>	<i>(a) Police Establishment Board No.2;</i> <i>(b) Police Establishment Boards at Range Level,</i> <i>(c) Police Establishment Boards at Commissionerate Level</i> <i>(d) Police Establishment Boards at District Level</i> <i>(e) Police Establishment Boards at the Level of Specialized Agency];</i>

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 personner; 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, the 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 up to 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) Police Personnel up to the rank of Police Inspector for transfer within the District: Police Establishment Board at district Level:

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

8. Perusal of abovesaid provision would show that power to transfer the police personnel prior to completion of normal tenure vests in the State Government, whereas the power to transfer the police personnel mid-term vests on the ground A to E mentioned in the abovesaid provisions in the Competent Authority and also in exceptional cases, in public interest and on account of administrative exigencies. Explanation to Section 22N would show that as per clause 'E', the Competent Authority for mid-term transfer of police personnel up to the rank of Police Inspector for transfer within the district is Police Establishment Board at District Level. So mandatorily the competent authority for mid-term transfer is Police Establishment Board at District Level.

9. In the case in hand, no doubt the respondents have produced and placed on record the documentary evidence showing that the impugned transfer of the applicant was effected for default report alleging incidents of misconduct

against the applicant while working at Manwat Police Station. It included also dereliction of duty in carrying out investigation in serious crimes. I have already narrated and discussed the several incidents while narrating the contentions of affidavit-in-reply of the respondents and documents produced thereof. The respondents however, have failed to establish the mandatory requirement of Section 22N(2) of the Maharashtra Police Act, as per which the competent transferring authority for mid-term transfer is said to be Police Establishment Board at District Level. The respondents have not placed anything on record to show that the proposal of transfer of the applicant for mid-term transfer was placed before the requisite Police Establishment Board at District Level. The respondents have failed to comply with the said mandatory requirement. In view of the same, even if according to the respondents, there were various default reports against the applicant, when the mandatory requirement of compliance of Section 22N(2) is not done, the impugned transfer order of the applicant cannot be said to be valid and proper. In the circumstances, the impugned transfer order of the applicant suffers from illegality and is

not sustainable in the eyes of law and is liable to be quashed and set aside.

10. The applicant has also challenged the transfer order of the respondent No.5 i.e. Sanjay Ramchandra Karnur, who is transferred by another impugned transfer order dated 07.10.2021 (Annex. 'A-9'), thereby transferring him from Police Control Room, Parbhani to Police Station, Manwat on the post of Police Inspector. By the said transfer order, the respondent No.5 has been transferred in place of applicant at Manwat Police Station. Record shows that notice of the Original Application was served upon the respondent No.5 on 07.12.2021. However, throughout the respondent No.5 remained absent and no any affidavit-in-reply resisting the Original Application is filed. In view of the same, the contentions raised by the applicant against the respondent No.5 has gone on record unchallenged. The respondent No.5 was at liberty to defend his transfer order by appearing and filing affidavit-in-reply but, he failed to do that. The transfer of the respondent No.5 was at Police Station, Manwat from where the applicant was transferred to Police Control Room, Parbhani.

11. In view of above, the impugned transfer order of the applicant dated 25.07.2021 (Annex. 'A-5') is liable to be quashed and set aside being illegal. Consequently, the impugned transfer order of the respondent No.5 dated 07.10.2021 (Annex. 'A-9') is also required to be quashed and set aside. Therefore, I proceed to pass the following order:-

ORDER

The Original Application is allowed in following terms:-

- (A) The impugned transfer order of the applicant dated 25.07.2021 (Annex. 'A-5') and impugned transfer order of the respondent No.5 dated 07.10.2021 (Annex. 'A-9'), both issued by the respondent No.4 i.e. the Superintendent of Police, Parbhani are quashed and set aside and consequently the respondent No.4 is directed to repost the applicant on his earlier place of posting at Police Station, Manwat within the period of one month from the date of this order.
- (B) No order as to costs.

(V.D. DONGRE)
MEMBER (J)

Place :- Aurangabad
Date :- 20.09.2022
SAS O.A.752/2021