

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

**COMMON ORDER IN ORIGINAL APPLICATION NOS. 848,**  
**869, 892, 893, 894 AND 895 ALL OF 2022**

**1) Original Application No. 848 of 2022**

Dist. : Beed

Vilas s/o Yadavrao Thombre, )  
 Age. 37 years, Occ. : Police Naik, )  
 (B.No. 1257), Highway Security Centre, )  
 Manjarsumba, Dist. Beed, )  
 Presently repatriated & posted in his )  
 Parent Department under establishment )  
 Of Res. No. 4, from specialized agency )  
 Of High Way Police on default report )..

**APPLICANT**

**VER S U S**

1. The Additional Chief Secretary, )  
 Home Department, Mantralaya, )  
 Mumbai – 32. )
2. The Additional Director General )  
 of Police (Traffic), M.S., )  
 having office at 6<sup>th</sup> floor, )  
 Moti Mahal, Near CCT Club, )  
 Opp. Samrat Hotel, Churchgate, )  
 Mumbai – 20. )
3. The Superintendent of Police )  
 Highway Security Squad, )  
 Aurangabad, Regional Department, )  
 Aurangabad. )
4. The Superintendent of Police, )  
 Beed, Dist. Beed. )..

**RESPONDENTS**

**WITH**

**2) Original Application No. 869 of 2022**

Dist. : Nanded

1. Ganpat Laxman Shewalkar, )  
Age. 54 years, Occ. : service as )  
Police Head Constable, )  
R/o Shivsadan, House No. 1, )  
Rajsarathi Nagar, Taroda (Bk.) )  
Nanded. )
2. Umakant Keshavrao Damerkar, )  
Age. 44 years, Occ. : service as )  
Police Head Constable, )  
R/o Plot No. 5, Jagrut Hanuman )  
Nagar, Wadi (Bk.), Nanded. )
3. Balaji Vitthalrao Poddar, )  
Age. 46 years, Occ. : service as )  
Police Head Constable, )  
R/o Yamunotri – 5, Sneha Nagar, )  
Police Colony, Nanded. )
4. Dnyaneshwar @ Dnyanoba Bhimrao )  
Tidke, Age. 47 years, )  
Occ. : service as Police Head )  
Constable, R/o Shri Laxmi Niwas, )  
House No. 34, Sambhaji Nagar, )  
Canal Road, Taroda (Bk.), Nanded.)

**(Applicant Nos. 1 to 4 deleted as per order dated 29.09.2022)**

5. Mahachandramani Bhimrao Kamble,)  
Age. 33 years, Occ. : service as )  
Police Head Constable, )  
R/o Shashi-Bhim Niwas, H.No.91,)  
Shinchan Nagar, Malegaon Road, )  
Nanded. )..

**APPLICANTS**VERSUS

1. The State of Maharashtra, )  
The Additional Director General )  
of Police (Traffic), M.S., )  
6<sup>th</sup> floor, Moti Mahal, )  
Opp. Samrat Hotel, Churchgate, )  
Mumbai – 400 020. )

2. The Superintendent of Police )  
 (Highway Security Unit), )  
 Aurangabad Range, Aurangabad. ).. **RESPONDENTS**

*W I T H*

**3) Original Application No. 892 of 2022**

Dist. : Nanded

- Balaji Vitthalrao Potdar, )  
 Age. 46 years, Occ. : service as )  
 Police Head Constable, )  
 R/o Yamunotri – 5, Sneha Nagar, )  
 Police Colony, Nanded. ) .. **APPLICANT**

V E R S U S

1. The State of Maharashtra, )  
 The Additional Director General )  
 of Police (Traffic), M.S., )  
 6<sup>th</sup> Floor, Moti Mahal, )  
 Opp. Samrat Hotel, Churchgate, )  
 Mumbai – 400 020. )
2. The Superintendent of Police )  
 (Highway Safety Police), )  
 Aurangabad Range, Aurangabad. )
3. The Superintendent of Police, )  
 Head Quarter, in the office of R-1,)  
 6<sup>th</sup> Floor, Moti Mahal, )  
 Opp. Samrat Hotel, Churchgate, )  
 Mumbai 400 020. ).. **RESPONDENTS**

*W I T H*

**4) Original Application No. 893 of 2022**

Dist. : Nanded

- Ganpat Laxman Shewalkar, )  
 Age. 54 years, Occ. : service as )  
 Police Head Constable, )  
 R/o Shivsadan, House No. 1, )  
 Rajsarathi Nagar, Raroda (Bk.), )  
 Nanded. ) .. **APPLICANT**

VERSUS

1. The State of Maharashtra, )  
The Additional Director General )  
of Police (Traffic), M.S., )  
6<sup>th</sup> floor, Moti Mahal, )  
Opp. Samrat Hotel, Churchgate, )  
Mumbai – 400 020. )
2. The Superintendent of Police )  
(Highway Safety Police), )  
Aurangabad Range, Aurangabad. )
3. The Superintendent of Police, )  
Head Quarter, in the office of R-1,)  
6<sup>th</sup> floor, Moti Mahal, )  
Opp. Samrat Hotel, Churchgate, )  
Mumbai 400 020. )..

**RESPONDENTS***WITH***5) Original Application No. 894 of 2022**

Dist. : Nanded

- Umakant Keshavrao Damekar, )  
Age. 44 years, Occ. : service as )  
Police Head Constable, )  
R/o Plot No. 5, Jagrut Hanuman )  
Nagar, Wadi (Bk.), Nanded. ) ..

**APPLICANT**VERSUS

1. The State of Maharashtra, )  
The Additional Director General )  
of Police (Traffic), M.S., )  
6<sup>th</sup> floor, Moti Mahal, )  
Opp. Samrat Hotel, Churchgate, )  
Mumbai – 400 020. )
2. The Superintendent of Police )  
(Highway Safety Police), )  
Aurangabad Range, Aurangabad. )

3. The Superintendent of Police, )  
 Head Quarter, in the office of R-1,)  
 6<sup>th</sup> Floor, Moti Mahal, )  
 Opp. Samrat Hotel, Churchgate, )  
 Mumbai 400 020. ).. **RESPONDENTS**

*W I T H*

**6) Original Application No. 895 of 2022**

Dist. : Nanded

- Dnyaneshwar @ Dnyanoba Bhumrao Tidke,) )  
 Age: 47 years, Occ. : service as )  
 Police Head Constable, )  
 R/o Shri Laxmi Niwas, House No. 34,) )  
 Sambhaji Nagar, Canal Road, )  
 Taroda (Bk.), Nanded. ) .. **APPLICANT**

*V E R S U S*

1. The State of Maharashtra, )  
 The Additional Director General )  
 of Police (Traffic), M.S., )  
 6<sup>th</sup> floor, Moti Mahal, )  
 Opp. Samrat Hotel, Churchgate, )  
 Mumbai – 400 020. )
2. The Superintendent of Police )  
 (Highway Safety Police), )  
 Aurangabad Range, Aurangabad. )
3. The Superintendent of Police, )  
 Head Quarter, in the office of R-1,)  
 6<sup>th</sup> Floor, Moti Mahal, )  
 Opp. Samrat Hotel, Charchgate, )  
 Mumbai 400 020. ).. **RESPONDENTS**

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**CORAM : Hon'ble Shri Justice P.R. Bora, Vice Chairman**

**DATE : 30<sup>th</sup> January, 2023**  
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**ORDER**

1. Heard S/shri J.S. Deshmukh & Ajay S. Deshpande, learned counsel for the applicants in respective matters and Shri V.R. Bhumkar, learned Presenting Officer for respondent authorities in all these matters.

2. The applicants in all these applications were deputed to work in Highway Police Force. Vide order dated 15.9.2022 all these applicants have been repatriated to their parent establishment on default report. Since the grievance of these applicants is common and the grounds which are raised against the impugned order are also similar, I have heard all these matters together and deem it appropriate to decide all these applications by common reasoning.

3. After having heard the learned counsel appearing for the parties and the learned Presenting Officers appearing in respective matters I have noticed that insofar as factual matrix is concerned there seems no much dispute. Applicants in their respective applications have raised several grounds in challenge to the impugned order. The main ground commonly raised by all these applicants is that the impugned order has been passed without approval of the Police Establishment Board No. 2 which

only is the competent authority for making midterm transfer of the applicants outside the Highway Police. In addition to the aforesaid ground as I mentioned earlier there are certain other grounds raised by the applicants in their respective applications.

4. Insofar as the applicant in O.A. No. 848/2022 is concerned, though the date of the impugned order is the same i.e. 15.9.2022, the said order has been issued under the signature of Police Superintendent, Highway Police Security Force, Pune Region, Pune and holding additional charge of Police Superintendent, Highway Security Force, Aurangabad Region, Aurangabad, whereas there is a common order dated 15.9.2022 against the applicants in the other 5 Original Applications and the same has been issued by the Police Superintendent (Headquarters), for Additional Director General of Police (Traffic), Maharashtra State, Mumbai. I deem it appropriate to reproduce herein below both the said orders :-

“O.A. No. 848/2022

-:कार्यालयीन आदेश:-

संदर्भ-अपोमसं(वा.)/४३/प्रलि/कसुरी अहवाल-पो.अंमलदार/२८/२०२१/३०९३ दि.१५/०९/२०२२

विषय - मुळ घटकात परत करणे बाबत

उपरोक्त संदर्भाधिन विषयान्वये कळविण्यात येते की, पोलीस अधीक्षक बीड, जि. बीड यांच्या आस्थापनेवरून महामार्ग पोलीस औरंगाबाद प्रादेशिक विभाग औरंगाबाद येथे प्रतिनियुक्तीवर नेमणुकीस असलेले खालील नमुद पोलीस अंमलदार यांनी केलेल्या कसुरीच्या अनुषंगाने महामार्ग पोलीस विभागातून, त्यांच्या मूळ घटकात (जि.बीड) येथे प्रत्यावर्तीत करण्यात येत आहे. या बाबतचे आदेश या कार्यालयास प्राप्त झाले आहे.

अ.क.	हुद्दा व ब.नं.	पोलीस अंमलदार यांचे नाव	म.पो.केंद्राचे नाव
०१	पोना/१३५७	विलास यादवराव ठोंबरे	मंजरसुबा जि.बीड
०२	पोर्को/२२१४	अजय बाबासाहेब जाधव	गेवराई जि. बीड

प्रभारी अधिकारी यांनी नमुद अंमलदार यांना त्यांच्या मुळ घटक पोलीस अधीक्षक बीड जि. बीड येथे प्रत्यावर्तीत करून अनुपालन अहवाल मा. अपर पोलीस महासंचालक वाहतूक म.रा. मुंबई कार्यालयास व या कार्यालयास सादर करावा.  
(सोबत:- आदेशाची प्रत)

सही/-  
(लता फड)  
पोलीस अधीक्षक,  
महामार्ग सुरक्षा पथक पुणे प्रादेशिक विभाग  
अति.कार्य. पोलीस अधीक्षक म.सु.प. औरंगाबाद  
प्रादेशिक विभाग औरंगाबाद ”

“O.A. No. 893/2022

--: आ दे श:-

पोलीस अधीक्षक, नांदेड यांच्या आस्थापनेवरून, महामार्ग पोलीस केंद्रात प्रतिनियुक्तीवर कार्यरत असलेले खालील पोलीस अंमलदार यांनी त्यांनी केलेल्या कसुरीच्या अनुषंगाने महामार्ग पोलीस विभागातून, त्यांच्या मूळ घटकात (जि. नांदेड येथे) प्रत्यावर्तीत करण्यात येत आहे.

अ.क.	पोलीस अंमलदार यांचे नाव व हुद्दा
०१	पोहवा. १७७५/गणपत लक्ष्मण शेवाळकर (कसुरी अहवाल सोबत जोडण्यात आला आहे.)
०२	पोना. ६०५/बालाजी विठ्ठलराव पोदार (कसुरी अहवाल सोबत जोडण्यात आला आहे.)
०३	पोना. ११२७/ज्ञानेश्वर भिमराव तिडके (कसुरी अहवाल सोबत जोडण्यात आला आहे.)
०४	पोशि. २८८४/महाचंद्रमणी भिमराव कांबळे (कसुरी अहवाल सोबत जोडण्यात आला आहे.)
०५	पोना. ७२२/उमाकांत केशवराव दामेकर

सही/-  
(सुनीता साळुंके-ठाकरे)  
पोलीस अधीक्षक (मुख्यालय),  
अपर पोलीस महासंचालक (वाहतूक)  
महाराष्ट्र राज्य, मुंबई यांचेकरिता.”

5. As noted hereinabove it is the foremost ground of objection raised on behalf of the applicants that both the impugned orders are without any authority of law and are



hence liable to be set aside on the sole ground. Relying on the provision under section 22J(4) of the Maharashtra Police Act it has been argued that the competent authority to effect the transfers of the applicants out of specialized agency is the Police Establishment Board No. 2. It is further contended that the Police Establishment Board at the specialized level in the present matters the 'Police Establishment Board at the Highway Traffic Level' is authorized to decide all transfers and postings of all Police personnel up to the rank of Police Inspectors within the specialized agencies, however, if the Police personnel up to the rank of Police Inspectors working in the specialized agency are to be transferred out of the specialized agency, the Police Establishment Board at the level of specialized agency is authorized to make appropriate recommendations to the Police Establishment Board and thus the ultimate authority for effecting such transfers is the 'Police Establishment Board No. 2'. The learned counsel appearing for the parties have asserted that in the present matters the impugned orders have been passed without approval of the Police Establishment Board No. 2 and are thus without any authority of law. The learned counsel, therefore, have prayed for quashment of the impugned orders on the aforesaid ground.

6. In the affidavits in reply filed on behalf of the respondents they have supported the impugned orders. The respondents have contended that the impugned orders are in fact are not the transfer orders but the orders of repatriation and in the circumstances, the provisions in regard to the transfer of Police personnel would not be applicable. The respondents have referred and relied upon Government Resolution dated 1.7.2015 to support their contention that the Police Constable working in the Highway Police Force can be transferred prior to completion of general service tenure by the concerned Establishment Board. It is further contended that the report of default committed by the applicants is being forwarded to the parent establishment of the applicants for conducting enquiry into the misconduct alleged against the applicants. To buttress the aforesaid contention reliance is placed by the respondents on rule 439 of the Maharashtra Police Rules. It is further contended that the preliminary enquiry in regard to the misconduct of the applicants was conducted, wherein the statement of each of the applicants has also been recorded. It is further contended that the default report was placed before the Police Establishment Board for Highway Traffic Level and after having considered the said report the said Police Establishment

Board has recommended the repatriation of the applicants to their parent establishment. According to respondents, there is no error in the orders so passed. The respondents on the aforesaid grounds have prayed for dismissal of the Original Applications.

7. Insofar as the contention/objection raised on behalf of the respondents that the impugned orders are not the orders of transfer and are of repatriation and, as such, the provisions in regard to transfers would not apply is concerned, this Tribunal at Principal Seat in O.A. No. 703/2022 decided on 28.9.2022 has elaborately dealt with the aforesaid objection. The discussion made in paragraph Nos. 10 & 11 of the said judgment is relevant, which reads thus: -

*“10. The submission advanced by the learned Presenting Officer that impugned order is repatriation and not transfer is totally fallacious and untenable in the light of provisions of Maharashtra Police Act referred to above. Once Applicants were posted in Highway Traffic Police, there has to be recommendation of PEB constituted at the level of Highway Police for sending them back to their parent department. The Applicants cannot be sent back to the parent department under the garb of repatriation. It has trappings of transfer in the eye of law. If such theory of repatriation is accepted, it would amount to permit executive to circumvent the provisions of law. Suffice to say, the order dated 11.07.2022 cannot be termed innocuous order of repatriation, but in law, it is transfer. Since, admittedly, it is not done with the recommendation of PEB, it is unsustainable in law.*

*11. As rightly pointed out by learned Advocate for the Applicant that this Tribunal has taken consistent view that*

*where Police Personnel are sent back under the garb of repatriation, it amounts to transfer and requires recommendation of PEB, as mandated under Section 22N(2) of Maharashtra Police Act.”*

In view of the findings recorded as above, the objection raised that the impugned orders are not orders of transfer but are of repatriation has to be rejected and is accordingly rejected.

8. The respondents, though, have denied the objection raised on behalf of the applicants that the impugned orders have been issued without any authority of law, in the affidavits in reply filed on behalf of the respondents in all these matters, it is nowhere contended that before passing the impugned order the approval has been obtained from the Police Establishment Board No. 2. Documents filed on record clearly reveal that the Police Establishment Board constituted for Highway Traffic Level has considered the cases of the applicants and took the decision to repatriate the applicants to their parent establishment and accordingly the impugned orders have been issued. It is thus evident that the impugned orders have been issued in pursuance of the decision taken by the Police Establishment Board at Highway Traffic Level.

9. Section 22J-(4) deals with the functions of Police Establishment Board at levels of specialized agencies. I deem it

appropriate to reproduce the entire said sub-section, which reads thus:-

*“22J-4) Functions of Police Establishment Board at Levels of Specialized Agencies –*

*The Police Establishment Board at the Levels of Specialized Agencies shall perform the following functions, namely :-*

*(a) the respective Board shall decide all transfers and postings of all Police Personnel to the rank of Police Inspector within the Specialized Agencies.*

*(b) The respective Board shall be authorized to make appropriate recommendations to the Police Establishment Board No. 2, regarding the postings and transfers out of the Specialized Agency, of the Police Personnel to the rank of Police Inspector.*

*Explanation – For the purposes of this section, the expression “Police Personnel” means a Police Personnel to the rank of Police Inspector.”*

10. As provided in sub-clause (b) of Section 22-J-(4) the Police Establishment Board at levels of specialized agencies is authorized only to the extent of making appropriate recommendation to the Police Establishment Board No. (2) and the orders of transfer are to be passed with the approval of Police Establishment Board No. 2. The Police Establishment Board at Highway Traffic Level comprises of following Officers :-

(i) Additional Director General of Police  
(Traffic) -- Chairperson

- |       |   |    |        |
|-------|---|----|--------|
| (ii)  | Superintendent of Police (HQ)             | -- | Member |
| (iii) | Superintendent of Police<br>(Thane Range) | -- | Member |
| (iv)  | Superintendent of Police,<br>(Pune Range) | -- | Member |

It is undisputed that the impugned orders have been passed on the recommendations of the Police Establishment Board at Highway Traffic Level comprising of Officers as aforementioned.

11. The aforesaid Board was, however, not competent to pass the impugned order and was authorized only to make appropriate recommendations to the Police Establishment Board No. 2. No such case is made out by the respondents that the recommendations of the Police Establishment Board at Highway Traffic Level were placed before the Police Establishment Board No. 2 and the said Board has approved the said proposal. No such document has been placed on record evidencing that the impugned order has been issued with the approval of the Police Establishment Board No. 2. Police Establishment Board No. 2 comprises of the following Officers :-

- |     |   |
|-----|---|
| (1) | Director General and Inspector General of Police,<br>.. Chairperson |
| (2) | Director General A.C.B., .. Member                                  |
| (3) | Commissioner of Police, Mumbai, .. Member                           |

- (4) Additional Director General & Inspector  
General of Police (Law & Order), .. Member
- (5) Secretary or Principal Secretary, as  
the case may be (Appeal & Security), .. Member
- (6) Additional Director General & Inspector  
General of Police (Establishment)  
.. Member-Secretary

In the present matters undisputedly it is revealed that the impugned order has not been issued with the approval of Police Establishment Board No. 2.

12. In O.A. No. 461/2021, Shri Ramkshan R. Jadhav Vs. State of Maharashtra & Ors. (decided on 10.8.2022) filed at Principal Bench of this Tribunal at Mumbai similar objection was raised and this Tribunal has set aside the transfer order challenged in the said O.A. for want of recommendations from Police Establishment Board No. 2. It appears to me that 'want of approval to the impugned transfer orders' by Police Establishment Board No. 2' is the basic infirmity and the orders impugned in all these applications are liable to be set aside on this sole ground.

13. As provided under section 22N of the Maharashtra Police Act, the normal tenure of all these applicants who are part of police constabulary is of 5 years at one place of posting. No

doubt, the State Government can transfer any police personnel prior to 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.

14. In the present matters since the impugned orders do not seem to have been passed by the State Government, it is evident that while repatriating the applicants the aforesaid provision has not been pressed into service. From the documents which are filed on record and the stand taken by the respondents in their affidavit in reply contending that the Police Establishment Board at the level of specialized agencies has recommended for repatriation of these applicants, it has become further clear that the impugned orders are not passed by the State Government by invoking the aforesaid provision. Perusal of the provisions under section 22J(4) and Section 22N of the Maharashtra Police Act leave no doubt that may it be a midterm transfer or the transfer in regular course after completing the normal tenure of



the Police Personnel working in the Highway Police the same can only be made by Police Establishment Board No. 2 on recommendations of the Police Establishment Board at Highway Traffic Level. In the instant matters though the Police Establishment Board at Highway Traffic Level has recommended the transfer of these applicants, the recommendations of the said Board were required to be placed before the Police Establishment Board No. 2, which is the only competent authority to effect the transfers of the Police Personnel working in the specialized agency. For want of approval to the impugned transfers of the applicants by the Police Establishment Board No. 2, the impugned orders cannot be held to be the valid transfer orders and cannot be sustained.

15. In the above circumstances, I do not see any propriety for going into merits of the other objections raised by the applicants. The impugned orders, being passed without any authority of law, deserve to be set aside on that sole ground. In the result, the following order is passed:-

**ORDER**

The order issued by respondent No.3 dated 15.9.2022 in O.A. No. 848/2022 and the common order dated 15.9.2022

issued against the applicants in OA Nos. 869, 892, 893, 894 and 895 all of 2022 by respondent no. 3 in each of said applications, are quashed and set aside.

(ii) The respondents are directed to reinstate the applicants in all these applications to their respective posts from which they were repatriated vide the impugned orders, within 2 weeks from the date of this order.

(iii) All these Original Applications stand allowed in the aforesaid terms without any order as to costs.

**VICE CHAIRMAN**

**Place : Aurangabad**

**Date : 30<sup>th</sup> January, 2023**