

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

**ORIGINAL APPLICATION NO. 900 OF 2019
(Subject – Transfer)**

DISTRICT : AHMEDNAGAR

Arvind S/o. Ramesh Bhingardive,)
Age : 42 years, Occu. : Service (Police Naik),)
Buckle No. 885,)
R/o. C/o. Supa Police Station,)
Tq. Parner Dist. Ahmednagar.)

.... **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through its Principal Secretary,)
Home Department,)
Mantralaya, Mumbai-32.)
2. **The Superintendent of Police,**)
Ahmednagar, Dist. Ahmednagar.)
3. **The Deputy Superintendent of Police,**)
Ahmednagar, Dist. Ahmednagar.)
4. **The Police Inspector,**)
Local Crime Branch, Ahmednagar,)
Tq. and Dist. Ahmednagar.)

...RESPONDENTS

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

: Shri V.R. Bhumkar, Presenting Officer for
Respondents.

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

DATE : **16.09.2022.**

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 transfer order of the applicant dated 21.09.2019 (part of Annexure A-3 collectively at page No. 17 of the paper book) issued by the respondent No. 3 i.e. the Deputy Superintendent of Police, Ahmednagar with the concurrence of the Superintendent of Police, Ahmednagar, thereby transferring the applicant from the post of Police Naik at Local Crime Branch, Ahmednagar to Supa Police Station supposedly on administrative ground in view of default report and also challenging the order dated 06.08.2021 (page No. 20C of the paper book), thereby posting the applicant after reinstatement by revoking suspension from the post of Police Naik at Police Headquarter, Ahmednagar to Pathardi Police Station and seeking reposting at Local Crime Branch, Ahmednagar by seeking amendment in the present Original Application.

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

(a) While working on the post of Police Naik at Parner Police Station, Dist. Ahmednagar under the jurisdiction of respondent No. 2 i.e. the Superintendent of Police, Ahmednagar by the order dated 08.05.2018 (part of Annexure A-1 collectively at page Nos. 12 and 13 of the paper book), the applicant was transferred from Parner Police Station, Dist. Ahmednagar to Local Crime Branch, Ahmednagar. Pursuant to that transfer order, the applicant was relieved from Parner Police Station on 17.06.2019 (part of Annexure A-1 collectively at page No. 14 of the paper book) and the applicant joined at Local Crime Branch, Ahmednagar on 24.06.2019 as per joining report dated 24.06.2019 (part of Annexure A-1 collectively at page Nos. 15 of the paper book). Since then the applicant was working at Local Crime Branch, Ahmednagar.

(b) While working at Local Crime Branch, Ahmednagar, on 20.08.2019 meeting of policemen (Darbar) was called in the hall (Darbar) of Police Inspector, LCB allegedly for knowing their difficulties and to resolve them. In the said meeting, the applicant was confronted as to why he keeps his mobile switched off after going home after duty hours and remained absent from Bandobast duties and special

squad duty. The applicant gave his explanation and in that regard, the statement was subsequently recorded on 27.08.2019. However, thereafter all of a sudden the respondent No. 3 i.e. the Deputy Superintendent of Police, Ahmednagar issued transfer order dated 21.09.2021(part of Annexure A-3 collectively at page No. 17 of the paper book), thereby transferring the applicant from LCB, Ahmednagar to Supa Police Station, Dist. Ahmednagar, thereby mentioning administrative ground. The Police Inspector, LCB, Ahmednagar relieved the applicant on 21.09.2019 as per the relieving order dated 21.09.2019 (part of Annexure A-3 collectively at page No. 18 of the paper book). Immediately thereafter, the applicant joined his duties at Supa Police Station, Tq. Ahmednagar. The said impugned transfer order of the applicant is mid-term transfer order being issued out of grudge and without any administrative reason. The said order is issued not in accordance with law. It is issued though nothing turned out in the Preliminary Enquiry Report. The applicant sought information under Right to Information Act, 2005 about any default report by application dated 23.09.2021

(Annexure A-4). The applicant, however, did not get any information.

(c) It is also contention of the applicant in the amended Original Application that the applicant was placed under suspension by the order dated 20.10.2020 (page Nos. 20A to 20B of the paper book). The said suspension was revoked by the order dated 06.07.2021 (page No. 20C of the paper book) after about a period of 9 months, thereby posting the applicant at Police Station, Pathardi. The applicant ought to have been reposted at Local Crime Branch, Ahmednagar after revocation of his suspension. According to the applicant, the impugned transfer of the applicant dated 21.09.2019 (part of Annexure A-3 collectively at page No. 17 of the paper book) is not issued in accordance with the provisions of Section 22N of the Maharashtra Police Act. Moreover, the subsequent posting order dated 06.07.2021 (page No. 20C of the paper book) posting the applicant at Pathardi Police Station instead of reposting him at LCB, Ahmednagar is also not in accordance with law. Hence, the present Original Application.

3. The affidavit in reply is filed on behalf of respondent Nos. 1 to 4 by one Shri Sagar Netaji Patil, the then Superintendent of Police, Ahmednagar. Further affidavit in reply is filed on behalf of respondent Nos. 2 to 4 to the amended O.A. by one Shri Manoj S/o Govind Patil, Superintendent of Police, Ahmednagar. Thereby the contentions raised in the O.A. and in the amended O.A. are denied and it is specifically contended that in the Police Darbar meeting held on 20.08.2019 for resolving the difficulties of police personnel, the applicant misbehaved by giving reply arrogantly to the queries regarding his absenteeism and keeping mobile switched off. In view of the same, the respondent No. 2 i.e. the Superintendent of Police, Ahmednagar vide order dated 22.08.2019 directed to the Sub-Divisional Police Officer (Rural), Ahmednagar to conduct the preliminary enquiry against the applicant. In respect of the said default report, the Sub-Divisional Police Officer (Rural), Ahmednagar conducted the Preliminary Enquiry. In the said Preliminary Enquiry, the statements of witnesses were recorded. The statement of the applicant was also recorded by giving him opportunity. After completing preliminary enquiry, the Sub-Divisional Police Officer (Rural), Ahmednagar submitted his report dated 28.08.2019 (page Nos. 45 to 51 of the paper book) prima-facie holding him

guilty of misconduct. In view of the same, the matter of the applicant was placed before the Police Establishment Board at District Level for transfer on administrative ground. The Police Establishment Board considering the serious misconduct of the applicant, approved the transfer as per the minutes dated 21.09.2019 (page No. 88 of the paper book). In view of the same, the impugned transfer order of the applicant dated 21.09.2019 (part of Annexure A-3 collectively at page No. 17 of the paper book) is issued by the respondent No. 3 i.e. Deputy Superintendent of Police (Headquarter), Ahmednagar with the direction and concurrence of the Superintendent of Police, Ahmednagar. It is legal and proper and it is in accordance with the provision of Section 22N of the Maharashtra Police Act.

It is also submitted that while the applicant was posted in the Parner Police Station in the year 2019, he failed to perform his duties properly and was involved in the serious misconduct. In that regard the preliminary enquiry was conducted by the Additional Superintendent of Police, Ahmednagar and in the said preliminary enquiry the applicant was found guilty. Hence, show cause notice dated 28.06.2017 was issued by the respondent No. 2 against the applicant to show cause as to why his two annual increments should not be withheld. Before that the applicant was

punished for about 7 times for his misconduct of his duties. Hence, the present Original Application is liable to be dismissed.

4. So far as the impugned posting order of the applicant at Pathardi Police Station is concerned, it is contended that the applicant was suspended in view of the serious misconduct committed by the applicant and in contemplation of disciplinary action. The applicant, however, has been reinstated in the service and is posted at Pathardi Police Station, Dist. Ahmednagar in accordance with law. The said order is also legal and proper.

5. The applicant filed rejoinder affidavit and short affidavit thereby denied the adverse contentions raised in the affidavit in replies and reiterated his contentions raised in the Original Application.

6. 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.

7. The present Original Application is filed seeking twofold reliefs namely in the first place challenging the impugned order

of transfer of the applicant dated 21.09.2019 (part of Annexure A-3 collectively at page No. 17 of the paper book), whereby the applicant has been transferred from LCB, Ahmednagar to Supa Police Station and secondly challenging the part of revocation and reinstatement of suspension order dated 06.07.2021 (page No. 20C of the paper book) only to the extent of his posting from the post of Police Naik, Police Headquarter, Ahmednagar to Pathardi Police Station. The applicant has joined his posting at Pathadri Police Station.

8. It is the case of the applicant that the impugned transfer order of the applicant 21.09.2019 (part of Annexure A-3 collectively at page No. 17 of the paper book) is mid-term and mid-tenure transfer order and is not issued in accordance with the provisions of Section 22N of the Maharashtra Police Act. On the other hand, it is the contention of the respondents that the said impugned transfer order of the applicant is issued by invoking the provisions of Section 22N(2) of the Maharashtra Police Act in its proper perspective by seeking approval of the requisite Police Establishment Board at District Level and in view of the default report, which is of serious nature.

9. Learned Advocate for the applicant strenuously urged before me that the applicant is a part of Constabulary as being working on the post of Police Naik and his normal tenure of posting of one post would be of five years in terms of Section 22N (1)(b) of the Maharashtra Police Act, which is as follows :-

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

(1).....

(a).....

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

The expression “Constabulary” is defined under Section 2(4A-1) of the Maharashtra Police Act, which is Police Constable, Police Naik, Police Head Constable and Assistant Sub-Inspector.

10. The applicant is working at LCB, Ahmednagar being transferred by previous transfer order dated 08.05.2018 (part of Annexure A-1 collectively at page Nos. 12 and 13 of the paper book). Pursuant to the said transfer order, the applicant joined at Local Crime Branch, Ahmednagar on 24.06.2019, which is reflected in his joining report dated 24.06.2019 (part of Annexure A-1 collectively at page Nos. 15 of the paper book). In view of the same, the impugned transfer order dated 21.09.2019 is passed within a period of three months. Section 2(6A) of the

Maharashtra Police Act defines “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. In view of above-said provisions, when the impugned order of transfer was issued in the month of September, the same is mid-term, as well as, mid-tenure transfer order. In view of the same, it is to be effected after observing and complying the provisions Section 22N and more particularly 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."

As per the proviso to Sub-Section (2) of Section 22N of the said Act, the Police Establishment Board at District Level is the competent transferring authority for effecting the mid-term transfer of the Police Personnel up to the rank of Police Inspector. Further in terms of Sub-Section (2) of Section 22N, mid-term transfer can be effected in exceptional cases, in public interest and on account of administrative exigencies.

11. In this background, if the impugned transfer order of the applicant dated 21.09.2019 is examined, it is seen that in the said order it is mentioned that the transfer order is issued in the background of the default report on administrative ground. There is no specific mention of Section 22N (2) of the Maharashtra Police Act. However, in the affidavit in reply the respondents have specifically contended that the impugned transfer order of the applicant is issued in compliance with the provisions of Section 22N(2) of the Maharashtra Police Act.

12. In this regard, the respondents placed reliance on the default report dated 20.08.2019 (page Nos. 40 to 42 of the paper book) submitted by the Police Inspector, LCB, Ahmednagar to the Superintendent of Police, Ahmednagar. Record further reveals that the respondent No. 2 i.e. the Superintendent of Police,

Ahmednagar by the letter dated 22.08.2019 (page No. 43 of the paper book) directed the Sub Divisional Police Officer (Rural), Ahmednagar to make preliminary enquiry into such default report. The Sub Divisional Police Officer (Rural), Ahmednagar conducted the preliminary enquiry and recorded statement of various relevant Police Officials and also recorded the statement of the applicant and submitted his reported dated 28.08.2019 (page Nos. 45 to 51 of the paper book) observing that there is substance in the default report and it is a fit case to take further action against the applicant.

13. The applicant has denied of having committed alleged misconduct specified in the default report, more particularly in Police Darbar being held by the Inspector of Police, LCB, Ahmednagar. In the said default report dated 20.08.2019 (page Nos. 40 to 42), it is alleged that when the applicant was confronted about keeping his mobile switched off after going to home, the applicant replied in arrogant manner alleging that he is being targeted. It is further alleged that he remained absent for Bandobasta duty unauthorizedly, when he was deputed at Shiridi for Guru Pornima Utsav from 14.07.2019 to 17.07.2019. Further he did not execute the non-bailable warrant received in RCC No. 34/2009 from 3rd Additional Chief Magistrate Court,

Ahmednagar and did not submit report. It is further alleged that on 20.08.2019, he was deputed in Special Squad for bringing accused from Yerwada Jail to Ahmednagar Court and phone call was made to his earlier number, but his phone was switched off and latter-on when message was made on whatsapp, he making a call and submitted that he is weekly off and has to go to Dhule and he cannot attain the duty. All these allegations are denied by the applicant and has stated that he being targeted.

14. The record further shows that the minutes of the Police Establishment Board at District Level dated 21.09.2019 (page No. 88 of the paper book), the respondents when submitted mid-term transfer proposal of the applicant in view of the default report and the preliminary enquiry report, it is approved and the applicant is being transferred to Supa Police Station. The respondents also relied upon the previous notice dated 28.06.2017 issued by the Superintendent of Police, Ahmednagar to the applicant to show cause as to why his two annual increments should not be withheld for his various instances of misconduct while working at Parner Police Station and 7 minor punishments imposed upon the applicant in the past.

15. In the circumstances as above, the learned Advocate for the applicant strenuously urged before me that the previous record of the applicant would be irrelevant, as he was earlier transferred from Parner Police Station to Local Crime Branch, Ahmednagar. He submitted that preliminary enquiry report against the applicant is in respect of alleged instance of misconduct in close vicinity of July 2019 and August 2019. The applicant in his statement recorded on 27.08.2019 (page No. 85 of the paper book) has given plausible explanation, which is not considered either by the Sub-Divisional Police Officer (Rural), Ahmednagar, who conducted the preliminary enquiry or by the respondent No. 2 i.e. the Superintendent of Police, Ahmednagar and Police Establishment Board at District Level. In view of the same, according to him the applicant is being targeted unnecessarily. He further submitted that the impugned transfer order of the applicant is punitive and mala-fide in nature. In view of the said alleged instance, the respondent No. 2 issued the suspension order dated 28.10.2020 (page No. 20A to 20B of the paper book) in contemplation of disciplinary action. However, the said suspension order is revoked by the order dated 06.07.2021 (page No. 20C of the paper book), thereby reinstating the applicant in service, but posting him at Pathardi Police Station instead of

posting him at LCB, Ahmednagar. The applicant is also aggrieved by the said posting order at Pathardi Police Station, which is also not in accordance with law.

16. To substantiate the above-said contentions, the learned Advocate for the applicant placed reliance on various decisions of this Tribunal and co-ordinate Bench of this Tribunal, which are as follows :-

- (a) Common order dated 06.08.2021 in O.A. Nos. 689 to 693 of 2020 with O.A. No. 05/2021 in the matter of Ajay Mahadev Kharade Vs. The State of Maharashtra and Anr.
- (b) O.A. No. 95/2021 in the matter of Nitin Surendra Shelar Vs. The State of Maharashtra and Ors. decided on 15.12.2021.
- (c) O.A. No. 192/2020 in the matter of Milind Ashok Bhamre Vs. The Superintendent of Police, Jalgaon decided on 17.02.2021.

All these matters were pertaining to mid-tenure transfers governed by Section 22N of the Maharashtra Police Act. It is held in those cases that in terms of Section 22N (2) of the Maharashtra Police Act, the case is to be made out as exceptional circumstance, in public interest and on account of administrative exigencies and by authority of requisite Police Establishment

Board at District Level. Blatant violation of Section 22N of the Maharashtra Police Act is found to be apparent and when such blatant violation is proved or established, then the transfer order is required to be interfered.

17. Learned Advocate for the applicant also placed reliance on the decision of the Hon'ble Apex Court in **Civil Appeal No. 7308/2008 (Arising Out of SLP (Civil) No. 3516 of 2007)** in the case of **Somesh Tiwari Vs. Union of India and Ors.** decided on 16.12.2008. In the said citation in para No. 20, it is held as follows :-

“19. 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.”

18. Learned Presenting Officer opposed the said submissions and submitted that in the case in hand, the impugned transfer order is issued by complied with the provisions of Section 22N(2) of the Maharashtra Police Act in its proper perspective and hence, interference cannot be caused in it.

19. After having considered the above-said rival contentions, it is evident that the impugned transfer order is issued in view of the default report, which is enquired into by holding preliminary enquiry by the Sub-Divisional Police Officer (Rural), Ahmednagar. Even statement of the applicant was recorded in the said Enquiry. After having considered the material on record, he found substance in the default report filed by the Police Inspector LCB, Ahmednagar and suggested further action. It is also a fact that in contemplation of disciplinary action, the applicant put under suspension by the order dated 28.10.2020 (page No. 20A to 20B of the paper book). However, the said suspension order is revoked by the order dated 06.07.2021 (page No. 20C of the paper book) and the applicant is reinstated in service and is posted at Police Station, Pathardi. The applicant is also aggrieved by the said posting order at Pathardi Police Station. According to him, upon reinstatement he ought to have been reposted at LCB, Aurangabad.

20. Record would show that after receipt of the preliminary enquiry report dated 28.08.2019 (page Nos. 45 to 51 of the paper book) from the Sub-Divisional Police Officer (Rural), Ahmednagar, the matter of transfer of the applicant was placed before the Police Establishment Board at District Level. The said

PEB at District Level held the meeting on 21.09.2021. Minutes of the said meeting are being placed on record at page No. 88 of the paper book. Perusal of the said minutes of the meeting would show that the said Board took into consideration the preliminary enquiry report and also submissions of the applicant and approved the transfer of the applicant from LCB, Ahmednagar to Supa Police Station. From the preliminary enquiry report, it is seen that only on the basis of single incident, the applicant can be said to have been singled out and was victimized. There are repeated instances of misconduct and dereliction of duties in July and August 2019. In such circumstances, no mala-fide can be attached to the impugned transfer order of the applicant. The order of suspension and revocation are passed subsequently. The suspension is also revoked. The revocation of suspension order is dated 06.07.2021 (page No. 20C of the paper book). The revocation and reinstatement is ordered without prejudice to any action to be conducted against the applicant and others. Only because he is reinstated into service on revocation of the suspension, the applicant cannot be said to be entitled to be reposted at LCB, Ahmednagar. The disciplinary action is still contemplated against the applicant. The alleged incident of default report is pertaining to discharging the duties the

applicant at LCB, Ahmednagar. In view of the same, continuation of the applicant on the same post could have caused prejudice to the public interest and administrative exigencies.

21. In these circumstances, in my considered opinion, the impugned order of transfer of the applicant is issued in compliance of the provisions of Section 22N of the Maharashtra Police Act. The case laws in the present O.A. relied upon by the applicant would not at all applicable, as in the case in hand, prima-facie, the compliance of Section 22N(2) of the Maharashtra Police Act is being complied with. So far as the order of posting at Pathardi Police Station is concerned, the applicant shall not be entitled for reposting at LCB, Ahmednagar upon his reinstatement, when the disciplinary action is still contemplated against him. He has not been exonerated of any of the disciplinary action. The preliminary enquiry report is also against the applicant. In such circumstances, no fault can be attributed to the order of posting of the applicant at Pathardi Police Station, as well as, impugned order of transfer dated 21.09.2019 (part of Annexure A-3 collectively). Both the impugned orders are legal and proper and no interference is called for those orders. I, therefore, proceed to pass following order :-

ORDER

The Original Application No. 900/2019 stands dismissed with no order as to costs.

PLACE : AURANGABAD.
DATE : 16.09.2022.

(V.D. DONGRE)
MEMBER (J)

KPB S.B. O.A. No. 900 of 2019 VDD Transfer