

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.459 OF 2016

DISTRICT : MUMBAI

Swapnil Dhondiram Dhule.)
Age : 38 Yrs, Desgn. Dy.S.P, ACB, Wardha))
Residing at Bldg. No.105/3589, Police)
Officers Quarters, Neharunagar,)
Kurla (East), Mumbai 400 024.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Chief Secretary,)
Mantralaya, Mumbai - 400 032.)
2. The Addl. Chief Secretary.)
Home Department, Mantralaya,)
Mumbai.)
3. The Director General of Police.)
Shahid Bhagatsingh Marg, Colaba,)
M.S, Mumbai.)
4. The Director General.)
Anti Corruption Bureau, Worli,)
M.S, Mumbai.)...**Respondents**

Shri M.R. Patil, Advocate for Applicant.

Smt. K.S. Gaikwad, Presenting Officer for Respondents.



P.C. : R.B. MALIK (MEMBER-JUDICIAL)

DATE : 27.07.2016

JUDGMENT

1. The Applicant is basically belonging to the cadre of Police Inspector (PI) having been for the time being attached to Anti Corruption Bureau (ACB) stationed at Wardha has been designated as Deputy Superintendent of Police (Dy.S.P) and he is stung by his transfer vide Exh. 'A-1', dated 24.5.2016 along with 21 other Officers from ACB to Nagpur City under the Commissioner of Police, Nagpur which indisputably is a mid-tenure transfer. He has challenged the same by way of this OA under Section 19 of the Administrative Tribunals Act, 1985 (Act hereinafter).

2. The date of birth of the Applicant is 30th March, 1978. He initially joined as Police Sub-Inspector (PSI) having been selected by MPSC on 31st March, 2005. In 2009, he was promoted as API and a deemed date of promotion was granted to him from 9.6.2008. He was further promoted as Police Inspector (PI) on 9.12.2011. He was posted at Chandrapur. He was then transferred as P.I, Thane which posting he held during 31.5.2013 and 29.4.2014. He sought transfer to Chandrapur so that he could join his spouse who is also a Police Personnel and he



was accordingly transferred to Chandrapur in the Anti Naxalite Cell. He took up that post on 26.5.2014 and continued till 18.8.2015. As hinted already, he was transferred to ACB by the order of the 3rd Respondent – Director General of Police, Mumbai on 4.8.2015. He joined that post on 19.8.2015 at Head Quarter, Mumbai. That posting remained short lived. He had already sought transfer to Chandrapur because his parents were not well and also the fact that his spouse was working in SID at Chandrapur. He got the next best posting at Wardha in ACB on 13.9.2015. He joined there on 5.10.2015 when “all of a sudden”, as he puts it by the order of 24th May, 2016 (Exh. ‘A-1’, Page 14 of the P.B.). He was again transferred to Nagpur City. As already mentioned above, it is indisputably a case of mid-term and mid-tenure transfer. He made representations thereagainst which failed to bear fruits. He claims to have an excellent service record, of which details have been furnished by him. He has referred to the relevant provisions of Section 22N of Maharashtra Police Act (Bombay Act No.XXII of 1951 (title substituted for Bombay Police Act) as amended by Maharashtra Act 11 of 2015, dated 6.4.2015 (to be hereinafter called the said Act or the said amending Act as the case may be). To the extent necessary, the said provision would be presently discussed.

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3. The grounds urged by the Applicant as and by way of his grievance sought to be ventilated hereby inter-alia are that he has not completed the normal tenure of three years in the specialized Branch of ACB, and therefore, the impugned order is violative of the provisions of Section 22N of the said Act. Be it noted that even if for the sake of argument, one proceeded on the basis that being a Dy.S.P. at his present posting, he was not entitled to three years even on the specialized Branch, he has not even completed two years. According to him, no special case is constituted against him nor is any public interest involved, so as to justify his transfer nor in fact, is it on account of administrative exigency. In that set of circumstances, the Applicant seeks quashing and setting aside of the impugned order in so far as it relates to him and effectively to repost him to the ACB, Wardha. The OA for the first time appeared before me in fact on 27.5.2016. I was told by the learned P.O. that the Applicant had already been relieved. I made it clear that there were two aspects of the matter. Firstly, like any other judicial forum, this Tribunal also had the powers to make orders of mandatory nature at interlocutory stage and nobody can force a state of *fait accompli*. I also noted that the employer was always at an advantage of moving with jet speed and to try to force such a state of *fait accompli*. That would not



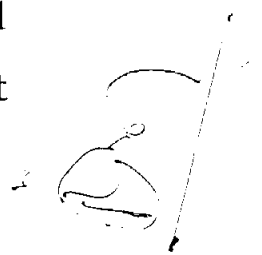
make this Tribunal a mute spectator. That was the essence of what I had mentioned in that order. A compilation handed over to me in support of the case of the Respondents that it was on account of administrative exigencies and public interest that the transfer was effected. That in turn was based on some alleged complaints against the Applicant. One of them was anonymous and the other one was pseudonymous. I expressed the opinion that in as much as the OA would have to be heard early, those documents be made a part of the Affidavit-in-reply. But in any case, express interim orders were not made and ultimately, the Affidavit came to be filed on behalf of the Respondent No.3 - Director General of Police. The Respondent No.1 is the State of Maharashtra through the Chief Secretary, the 2nd Respondent is Additional Chief Secretary, Home Department, the 3rd Respondent is the Director General of Police and the 4th and the last is the Director General, Anti Corruption Bureau. The Respondents 1, 2 and 4 did not file Affidavits-in-reply.

4. The Affidavit-in-reply on behalf of the 3rd Respondent has been filed by Shri Anil P. Sawant, a Desk Officer. The said Affidavit-in-reply gives out some details of postings of the Applicant which aspect of the matter has

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already been covered hereinabove. A reference is made to one anonymous and two pseudonymous complaints against the Applicant which were annexed to a report supposedly submitted by the ACB against the Applicant. According to the deponent, the ACB functioning is extremely confidential and retention of the Applicant was not found proper and hence, they made a request for transfer of the Applicant in the Annual General Transfer of 2016. Now, here, at this stage itself, it needs to be noted that this particular reason given out in the Affidavit-in-reply, does not find mention in the order herein impugned or any other order of contemporaneous vintage. Therefore, going by the principles laid down by the Hon'ble Supreme Court in **Mahendersingh Gill Vs. Chief Election Commisioner, AIR 1978 SC 851**, the Respondents will have to stand or fall on the basis of the contents of the impugned order and not on any other reason trotted out later on in Affidavits, etc., based on the material subsequently collected.

5. According to Affidavit-in-reply, the above referred report was placed before Police Establishment Board No.2 (PEB-2) which came to be constituted under Section 22N(2) of the said Act and ultimately it resulted in the impugned order having been made against the Applicant. In that



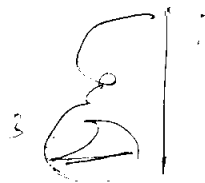
connection, public interest and interest of administration are also invoked. The Affidavit-in-reply puts the Respondents in their back for impartiality because Nagpur is nearer to Chandrapur which would take care of the interest of the Applicant's family. It is denied that the impugned order is arbitrary, etc. and in that connection, reference is made to Section 22N of the said Act.

6. It must have become clear that in this particular OA, one is concerned with the issue of transfer of a Police Personnel of the rank of P.I. who by virtue of the specialized field is at the moment functioning as Dy.S.P. Now, the perusal of the Affidavit-in-reply and some other documents submitted later on would show that the Applicant came to be transferred on account of anonymous and pseudonymous complaints. As the following discussion would show the scope of this OA is severely restricted to consider, if the order of transfer in the background of the statutory provisions to which a reference would be made presently is sustainable. The decision of this OA one way or the other would in no way hamper or affect the other disciplinary powers of the concerned authorities, if a case therefor is made out. But then, to confuse or mix-up those powers with transfers will be an erroneous approach. Once, the service condition of

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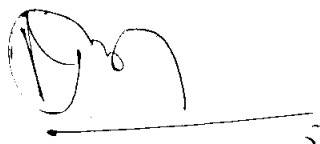
transfer has become statute regulated as indeed it has, then the authorities are bound to act in accordance therewith without mixing it or confusing with any other power or jurisdiction. This Tribunal presided over by the Hon'ble Chairman, Hon'ble Vice-Chairman and myself of late had occasions to deal with such matters because it seems a number of transfers came to be effected recently and a truly good number of transfers were made on 24th may, 2016 itself. I had occasions to deal with the said OAs at interlocutory stage as well as at least 2 OAs that came to be finally decided viz. **OA 466/2016 (Arun R. Pawar Vs. The State of Maharashtra and 2 others and one another OA, 12.7.2016.** In that particular Judgment, I had an occasion to trace the history of the amendments brought to the Maharashtra Police Act including relating to the service condition of transfer. I shall keep calling that particular Judgment as **Arun Pawar's** case. It will be advantageous to reproduce Para 7 thereof, in which I quoted from another interim order made by me in a fasciculus of OAs leading one being OA 447/2016 and 7 others.

“7. In fact, this year, several transfers came to be made in the Police Establishment, more or less in the same set of facts. A number of Original Applications (OAs) are brought before

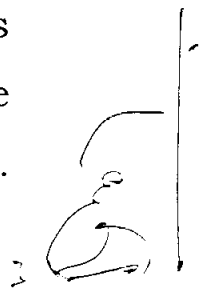
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this Tribunal for redressal. In some matters, interim reliefs have also been granted. Now, in making such interim orders, in a fasciculus of 10 OAs being OAs 447 and 7 others involving 10 Applicants on 31.5.2016, I granted interim relief and that too of mandatory nature at interlocutory stage and effectively ordered reposting of those Applicants to the posts that they were transferred from. The legal issues that arose for consideration therein are more or less the same herein. The history preceding the amendments to the said Act was noted in Paras 5 & 6 of the said order by me. Let me reproduce those two Paragraphs (5 & 6).

“5. The issues herein involved including the one under consideration befall the ambit of the provisions of the Maharashtra Police Act, 1951 as amended from time to time including on 6th April, 2015. The rest of the provisions are also important, but the pivotal provision herefor is Section 22(N) of the said Act. It cannot be disputed that in a historical perspective, as a result of the judgment of the Hon’ble

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Supreme Court in **Prakash Singh and others Vs. Union of India and others (2006) 8 SCC Page 1 (Prakash Singh's case)**, the State Government constituted what has come to be known as Police Establishment Board (to be hereinafter called Board). Be it noted at this stage itself that transfer is one aspect of the service condition of the Government employees and in this case Police Personnel which has engaged of late the attention of the society, and therefore, of all the 3 wings of the State including the judiciary. It is not necessary at this stage to delve into the details thereof and it would suffice to mention that on account of various aberrations and other factors which were not quite honourable, the need was felt to streamline, regularize and make transparent the facet of transfer of the Government employee which in this case happen to be Police Personnel. Therefore, that aspect of the matter has now become statute regulated and that is relatable to the mandate of the Hon'ble Supreme Court in **Prakash Singh's** case.



Therefore, it will have to be zealously guarded and made sure that the transfer aspect of the matter is not made light of and is made strictly adhering to the statutory principles and also to translate into reality the legislative intent which in turn as mentioned above, traces its origin to the mandate in **Prakash Singh's** case.

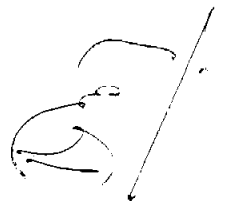
6. Another aspect of the matter is that these disputes are brought before a forum which generally and by and large exercises jurisdiction of judicial review of administrative action with all the well known jurisdictional constraints. However, an approach which may lead to practical refusal to exercise jurisdiction at all even when there is a statutory mandate which traces its origin to the law laid down by the Hon'ble Supreme Court, then the judicial forum must guard thereagainst and must show awareness to the need of making sure that the statutory mandate was properly observed and if it is found even on a surface view that it was not, then there would be no

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other-go but "to act" in so far as the judicial forum is concerned."

7. It is, therefore, clear that the legislative exercise apart from legislature's own wisdom in good measure was influenced by the law laid down by the Hon'ble Supreme Court in **Prakash Singh's** case. To further amplify, let me reproduce Para 9 from **Arun Pawar** (supra).

"9. It must have become clear from the above extract that in deference to the directions of the Hon'ble Supreme Court in **Prakash Singh's** case (supra), the amendments came to be made in the said Act and one fallout of it was the establishment of PEB-2. The provisions of Section 22E lays down the mandate for the State Government to notify in the Official Gazette the Constitution of PEB-2. That is a six person Board under the Chairmanship of Director General and Inspector General of Police, Additional Director General and Inspector General of Police (Estt.) is the Principal Secretary. The Members are Director General (Anti Corruption Bureau), Commissioner of Police, Bombay, Additional Director General and



Inspector General of Police (Law and order) and Secretary or Principal Secretary as the case may be (Appeal and Security). There is a provision for incorporating a Member of Backward Class, if none of the above referred Members belonged thereto.”

8. Further, the legal position was noted that under Section 22F, the functions of PEB-2 were prescribed. Under Section 22N(2)(a), in matters relating to PIs, the State Government was empowered to give binding directions to the PEB-2, even with regard to the transfers. Section 22N prescribed the normal tenure of the Police Personnel which in this particular OA could be of 3 years. The term, “general transfer” as defined by Section 2 (6-A) would mean the posting of 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 every year after completion of normal tenure as mentioned in Section 22N (1) which in this particular matter would be three years, granting all latitude to the Respondents, it could be two years, but in fact to repeat, it would be three years. Section 2(6-B) defines “mid-term transfer” as transfer of a Police Personnel in the Police Force other than the general transfer. The word, “mid-tenure transfer” is

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not specifically defined, but in **Arun Pawar's** case, I noted that in **OA 191/2015 (Narayan M. Sarangkar Vs. S.P, Pune, Rural and one another, dated 26.10.2015)** it was discussed. In fact, in matters such as the present one would be covered by that particular phrase.

9. Now, in order to have a proper grasp of the definition of the word, "competent authority for general transfers", I think I had best reproduced Paras 14, 15, 16 and 17 from **Arun Pawar's** case.

14. Section 22N(1)(c) defines the term, "competent authority for the general transfers". In so far as the Inspectors which I am concerned with, it is PEB-2. The proviso thereof needs to be reproduced along with Section 22N(2).

"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 Police Personnel of the Police Force.”

15. Pertinently, by an amendment of 16.2.2015, a proviso came to be deleted whereby the power of competent authority could be delegated under the said sub-section. This, put simply, would mean that the powers exercisable by the State Government will have to be exercised by no authority other than the State Government and even the PEB-2 will not be able to exercise those powers which vest exclusively in the State Government.

16. There is a proviso after the explanation inserted by the amendment by Maharashtra 11



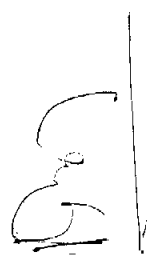
of 2015 (vide Section 6(b)(ii) w.e.f. 16.2.2015 whereby the earlier explanation was substituted. The proviso thereto reads as follows :

“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.”

17. This proviso enshrines within itself the powers of the highest competent authority (the Hon'ble Chief Minister) to make transfer of any Police Personnel without any recommendation from any PEB.”

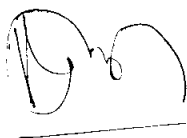
10. **Narayan Sarangkar's** case was discussed by me in Para 18 of **Arun Pawar's** case and that Para also needs to be reproduced.

“**18.** I have already referred to the order of this Tribunal in Narayan Sarangkar's case (supra). In that particular matter, in Para 8, the Hon'ble Vice-Chairman was pleased to observe



that in case of mid-tenure transfer, which phrase was not defined, the transfers can be made only by the State / Government on the grounds mentioned in Section 22N (1) and not otherwise. I have already enumerated hereinabove the grounds on which under Section 22N the transfers could be effected. However, the impugned order taken as it is without anything else is legally untenable for the simple reasons that those powers can be exercised only by the State Government and not by PEB or even the highest Police functionary. Whatever can be exercised as per the clear provisions in the Act by the State Government cannot be exercised by any authority subordinate thereto. It bears repetition that even the State Government cannot now delegate its power to any subordinate authority to exercise the powers that are exercisable by the State Government.”

11. It is, therefore, very clear that legally this being an instance of mid-tenure transfer, the authority to effect the transfer was the State Government and neither PEB-2 nor even the highest Police functionary in the State. Whatever can be done or performed by the Government can only be



done or performed by the Government and not by any other authority subordinate to the Government. In so far as the effect of any transfer effected by any authority not competent to do so, Mr. M.R. Patil, the learned Advocate for the Applicant referred me to **Somesh Tiwari Vs. Union of India, 2009 (3) SLR 506 (SC)**. Para 20 thereof was fully quoted by me in **Arun Pawar's** OA and the same needs to be done herein as well.

“20. It is very clear from the above extract that in so far as service condition of transfer is concerned, once it is statute regulated, then on no ground other than those codified ones could the transfer be legally effected. In fact, it would amount to malice in law if the employer did that. In fact, the Hon'ble Supreme Court has been pleased to hold that such an order, were it to be made, would be wholly illegal.”

12. I must repeat, therefore, times out of number that even a mid-tenure transfer on the grounds set out in the provision above quoted, could be made only by the Government and not by any other authority. Therefore, the order effecting transfer by any other authority would be



non-est and ineffective and on that ground alone, even the clock will have to be set back as it were.

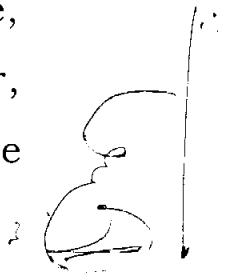
13. As a matter of fact, on the above conclusion, the OA decides itself. However, a little further discussion would not be quite out of place. It must, however, be quite clearly understood that herein I am only narrating the facts with regard to the complaints against the Applicant as facts and I determine nothing for or against one or the other party and nobody gets concluded by my observations although I shall endeavor my very best not to tread on, "dangerous area" as it were.

14. Taking the complaints as they are, without going into the finer details thereof, they related to the earlier stint of the Applicant at Chandrapur. It is stated in the complaints and I am only recording it as a narration and nothing more than that the Applicant was earlier married and had a 12 year old daughter. While functioning in Chandrapur District, he got involved with a lady Police Constable and they began cohabiting. There were allegations of financial impropriety against both, the Applicant and the lady. There was a loud whisper that if the Applicant was allowed to function in ACB at Wardha, he would be in a position to wreck vengeance against those



that may have complained against him. Now, this aspect of the matter has to be understood in the context of the fact that the complaints were either anonymous or pseudonymous and one knows not how the Applicant could be able to identify the complainant, but I leave it at that.

15. There were complaints also against a Superintendent of Police under whom the Applicant was working. It was alleged that the two were on money making and carnal enjoyment spree as it were. It would appear from what is part of Exh. 'R-1' collectively that the complaints were made against the said S.P. and the Applicant towards the beginning of this year also by the unidentified Police people as well as by one transporter. Now, at this stage itself, it needs to be noted that there is a State Government G.R. of 25th February, 2015 in the matter of dealing with the anonymous complaints. A copy thereof in fact has been annexed by the Respondents themselves to their Affidavit-in-reply at the last page of this OA (Exh. 'R-3'). It has been therein provided that no cognizance should be taken on anonymous complaints and they should be filed. Where the allegations were vague, such complaints are also be similarly treated. However, where the allegations could be enquired into, it should be



ascertained as to whether the complainant (presumably in case of allegedly pseudonymous complaint) had made the complaint.

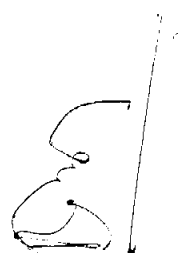
16. It seems that Shri K.L. Supare, Deputy Superintendent of Police, Anti Corruption submitted his report presumably as per the directions of his superiors on 2.3.2016. In fact, there is at least one subsequent report also, but Mr. Supare's report was the one that was submitted before the impugned order was made while the other report was of June this year and I have already indicated above with the guidance from the Judgment in **Mahendersingh Gill's** case (supra) that the said post transfer material may not be able to cut much ice. The report of the Dy.S.P. Shri Supare in good measure did not find much substance in the complaints except for a few facts here and there including perhaps the matrimonial status of the Applicant.

17. In a report submitted by the Additional Superintendent of Police (ACB) Shri Rakesh Sharma, it was in effect mentioned that there were some allegations and the tenor of his report is that if an open enquiry was held may be it would yield some result.




18. Now, I must repeat that in this OA, I am not concerned with any other aspect than the transfer of the Applicant. I have already mentioned this position earlier and as for rest, I can do no better than reproduce from **Arun Pawar's** case Paras 21 to 23, which I do hereby do.

“21. No doubt, the provisions above referred to, lay down that the State Government could effect transfers, if the disciplinary proceedings were instituted or contemplated against the Police Personnel. Here, I must repeat times out of number that this power can never be exercised by PEB-2 and this initial jolt to the case of the Respondents is not just a minor jolt but is fatal. But still further, there has to be tangible and concrete material to suggest that the said procedures were either instituted or contemplated and the judicial forum will certainly not act on a mere say so of the employer. Similarly, there is no question of conviction herein involved. There is a reference in Clause (c) of the proviso to the allegations of corruption or the Police Personnel having become otherwise incapacitated and the said Police Personnel being guilty of dereliction of duty.



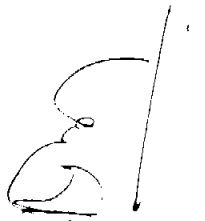
Similarly, by another proviso, it is laid down that in case of a serious complaint, irregularity, law and order problem, the highest competent authority could take the action of making transfer but here, PEB is by no means such a highest competent authority. Still further, by no stretch of imagination, can it be said that mere allegations of corruption, etc. would be sufficient even for the Government, and in this case, it is just PEB-2, to effect the transfers. In **OA 609/2015 (Rajendra M. Todkar Vs. The State of Maharashtra and 2 others, dated 10.3.2016)**, it was held by the Hon'ble Vice-Chairman that a mere complaint unless enquired into was not sufficient to hold a person guilty even of dereliction of duty. It was also held that on a mere say so about administrative exigency an order of transfer cannot be upheld because were it to be done the provisions of the said Act would simply become otiose.

22. In dealing with a case under Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005, a Division Bench of the



Hon'ble Bombay High Court at its Aurangbad Bench in **Ramakant B. Kendre Vs. The State of Maharashtra, 2012 (1) MLJ 951**, Their Lordships were pleased to hold *inter-alia* that a judicial forum has to very zealously guard the rights of the employee flowing from the Transfer Act, and therefore, there has to be exceptional and special reasons in writing and that writing must be produced for the perusal of the judicial fora. A mere say so, that the transfer was in public interest would not be sufficient unless there were circumstances including file, notings. Now, no doubt the provisions of the said Act may not be exactly worded as the provisions of the Transfer Act, but in essence there is not much difference in its spirit and soul. In case of Police administration that would be more so because as mentioned already a number of times, the origin is to be traced to the law laid down by the Hon'ble Supreme Court in **Prakash Singh's** case.

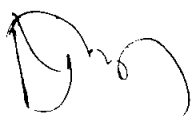
23. Therefore, what is most important is to uphold the basic principle underlying the provisions of the said Act, and therefore, mere high sounding, serious looking allegations of



complaint or incompetence would not be enough to sustain such an order of transfer unless more tangible material was placed before the judicial forum in support of the case of the Respondents.”

19. In **Arun Pawar's** case, I took a specific note of the fact that a case of a large number of Officers came to be considered by the PEB-2 for mid-term transfer. It was of 70 in that matter while it is 22 including the Applicant in this matter. I expressed an opinion in Para 25 as well as elsewhere in effect that it appears not quite probable that there could be proper application of mind in such circumstances, when a large number of cases are considered in one matter. Further, Para 27 from **Arun Pawar's** case to the extent relevant needs to be reproduced herein which I do hereby do.

“27. The above discussion must, therefore, make it quite clear that the impugned order in so far as it relates to the two Applicants in these OAs is unsustainable. I have already quoted 2 Paragraphs hereinabove from my own interim order in other OAs. It needs to be emphasized that the authorities are in duty bound to implement the legal provisions while exercising

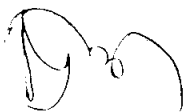
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their powers. The judgment in **Prakash Singh's** case needs to be carefully perused in order to appreciate the background that it was rendered in, and which ultimately resulted in the legislative enactments. The concept of transfer has its own peculiar hue, and therefore, the same cannot be resorted to outside and glossing over of the legal principles, more particularly, when the enactments must have been occasioned by the law laid down by the Hon'ble Supreme Court in **Prakash Singh's** case (supra). The whole aspect of the transfer has to be, therefore, quite diligently grasped and implemented and other factors remaining constant in the name of transfer whatever cannot be done directly cannot be countenanced having done indirectly. The existence of disciplinary powers is one aspect of the matter but those powers cannot be confused with the powers to effect transfers in the set of facts and in circumstances such as they obtain herein. In fact, I am of the opinion that the principles that emanate from the law and the case law should be borne in mind and whenever applicable should be implemented even if the matters are pending in this Tribunal."

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20. The foregoing would lead me to conclude that despite quite high sounding serious looking allegations against the Applicant in so far as the issue of transfer is concerned, the same will have to be in accordance with statutory principles to which a detailed reference has been made hereinabove. For all the various aspects of the matter, the impugned order is clearly unsustainable. In so far as the fact that the Applicant may have been relieved, it is hardly of any consequence and again in that connection, I may approvingly reproduce Para 28 from **Arun Pawar's** case. Those observations apply fully and completely to the present OA as well.

“28. Now, it is always possible for the Respondents to argue that the Applicants had been relieved and may be even successors appointed. However, once the rights of the Applicants are crystallized, they are crystallized with effect from the date of the order of transfer and just because a legally unsustainable order was made that quite certainly cannot be allowed to become irreversible. If anything, it will have to be given effect to come what may. It is a far cry to suggest that while at an interim stage, a mandatory order can be made but the position at



the final stage of a *lis* would be weaker. Further, in view of the facts, there would be no question of giving a long time for compliance because the Respondents have acted in breach of the plain provisions of law and the Supreme Court Judgment in **Prakash Singh's** case. No request for a longer date shall be even entertained much less allowed. The judgment is ready and the Respondents can have a copy of it just now.”

21. In this view of the matter, therefore, the impugned order of transfer dated 24th May, 2016 (Exh. 'A-1', Page 14 of the P.B.) in so far as it relates to the Applicant Swapnil D. Dhule stands hereby quashed and set aside. The Respondents are directed to repost the Applicant to the post he was transferred from by the impugned order within one week from today. The Original Application is allowed in these terms with no order as to costs.

Sd/-
(R.Ā. Malik)
Member-J
27.07.2016

Mumbai
 Date : 27.07.2016
 Dictation taken by :
 S.K. Wamanse.