

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI**

**ORIGINAL APPLICATION NO.331 OF 2021**

**DISTRICT: THANE  
SUBJECT: TRANSFER**

- 1) Shri Nitin Vasant Thakre, )  
Aged 52 Yrs, Transferred from the Post of )  
Incharge Police Inspector, Crime Branch, Unit-I, )  
Thane Police Commissionerate, Thane, )  
R/o. 1701, B-1, Gemini Hiranandani Meadows, )  
Thane (W). ) **... Applicant**

**Versus**

- 1) The Director General and Inspector General )  
of Police ( M.S.) Mumbai, having Office at Old )  
Council Hall, Shahid Bhagatsinh Marg, )  
Mumbai - 400 039. )
- 2) The Commissioner of Police, )  
Thane Police Commissionerate, )  
Having Office at Thane. ) **...Respondents**

Shri A.V. Bandiwadekar, learned Advocate for the Applicant.

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

CORAM : Shri A.P. Kurhekar, Hon'ble Member (J)

DATE : 24.06.2021.

**JUDGMENT**

The Applicant has challenged the transfer order dated 04.05.2021 whereby he was transferred from the post of Police Inspector (PI), Crime Branch , Unit -1, Thane city to District Caste Certificate Verification Committee,

Nandurbar, invoking jurisdiction of this Tribunal under Section 19 of Administrative Tribunal Act, 1985.

2. The facts giving rise to Original Application are as under:-

The Applicant is presently serving in the cadre of Police Inspector (PI). At the time of impugned transfer order, he was posted as PI, Crime Branch Unit-1, Thane City. He claims to be entitled for six years tenure in Thane Commissionerate in terms of the Section 22N(1)(d) of Maharashtra Police Act. However, Police Establishment Board (PEB)-1 headed by Respondent No.1 – Director General and Inspector General of Police transferred him to District Caste Certificate Verification Committee, Nandurbar. The Applicant, therefore, contends that the impugned order is mid-tenure transfer order and it is in violation of provisions of Maharashtra Police Act. Accordingly, the Applicant was relieved from the post of PI, Crime Branch, Unit-1, Thane City on 06.05.2021 for joining at Nandurbar.

3. Shri A. V. Bandiwadekar, learned Counsel for the Applicant sought to assail the impugned transfer order on the following grounds:-

(A) In terms of Section 22N(1)(d) of Maharashtra Police Act, the Applicant is entitled to six years tenure at Thane Police Commissionerate but he has completed five years and ten months only as specifically mentioned in PEB Minutes, and therefore, impugned transfer order is bad in law.

(B) Since the Applicant is transferred out of Commissionerate, such transfer was required to have preceded by recommendation of PEB at Commissionerate level but in the present case, there being no such recommendation, the transfer order issued by PEB -2 is unsustainable in law.

(C) As per PEB Minutes, Shri Sanjay Pandey was only holding additional charge of the post of Director General of Police, and therefore, he was not competent to head PEB and to transfer the Applicant.

(D) The Minutes of PEB were approved by Circulation excluding Additional Chief Secretary, Home who was the only independent Member in PEB, and therefore, without his consultation or approval, the decision to transfer the Applicant is unsustainable in law.

4. Per contra, Smt. Kranti Gaikwad, learned Presenting Officer with reference to Affidavit-in-Reply filed by the Respondent No.1 sought to contend that the Applicant had already completed his normal tenure at Crime Branch, Thane City. Though, in Minutes of PEB, his tenure is shown as five years and ten months in fact, he has completed six years tenure in Thane. As regard absence of recommendation of PEB by Commissionerate level, she submits that it is not mandatory and PEB-2 headed by the Director General of Police is the competent authority for transfer of the Applicant. She further submits that non consultation with one of the member of PEB is not fatal since the decision taken by majority would prevail. As regard competency of Director General of Police, she submits that Shri Sanjay Pandey was holding additional charge of the post of Director General of Police & Inspector General of Police, and therefore, in terms of Section 157A of Bombay Police Act, he was competent to exercise all the administrative powers. Lastly, she submits that in absence of malice or malafide on the part of Respondents, the transfer being incidence of service, it cannot be interfered with in limited jurisdiction of judicial review.

5. True, the transfer of a Government servant being incidence of service, a Government servant has no legally vested right to particular tenure or particular place as of right. However, now the transfer of police personnel are regulated and controlled by the provisions of Maharashtra Police Act wherein various amendments were carried out in pursuance of directions given by the Hon'ble Supreme Court in **(2006) 8 SCC 1 (Prakash Singh & Ors V/s Union of India & Ors)**.

6. Section 2(6B) defines mid-term transfer as transfer of Police Personnel in the Police Force other than the General Transfer. Whereas, 'general transfer' as defined in Section 2(6A) of Maharashtra Police Act, means posting of police personnel in the police force from one post, office or Department to another post, office or Department in the months of April and May of every year, after completion of normal tenure as mentioned in Sub-Section 1 of Section 22N of Maharashtra Police Act.

7. Here it would be apposite to reproduce Section 22N of Maharashtra Police Act which is as under:-

**“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) 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 Commissionerate 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:-

Police Personnel	Competent Authority
(a) Officers of the Indian Police Service.	.... Chief Minister
(b) Maharashtra Police Service	

	Officers of and above the rank of Deputy Superintendent of Police.	....	Home Minister
(c)	Officers up to Police Inspector	....	(a) Police Establishment Board No.2. (b) Police Establishment Board at Range Level (c) Police Establishment Board at Commissionerate Level. [(d) Police Establishment Board at District Level (e) Police Establishment Board at the Level of Specialized Agency]:

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, the expression "Competent Authority" shall mean :-

Police Personnel

Competent Authority

- |     |   |      |   |
|-----|---|------|---|
| (a) | Officers of the Indian Police Service.  | .... | Chief Minister;   |
| (b) | Maharashtra Police Service Officers of and above the rank of Deputy Superintendent of Police  | .... | Home Minister;  |
| (c) | Police Personnel up to the rank of Police Inspector for transfer out of the respective Range or Commissionerate or Specialized Agency | .... | Police Establishment Board No.2;  |
| (d) | Police Personnel up to the rank of Police Inspector for transfer within the respective Range, Commissionerate or Specialized Agency   | .... | Police Establishment Boards at the Level of Range, Commissionerate or Specialized Agency, as the case may be; |
| (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 order problem the highest Competent Authority can make the transfer of any Police Personnel without any recommendation of the concerned Police Establishment Board.]”

8. In pursuance of the directions given by the Hon’ble Supreme Court in **Prakash Singh’s** case, the Police Establishment Boards were constituted at each level. In so far as PEB at the level of Director General and Inspector General of Police is concerned, in terms of Section 22(E), the Police Establishment Board No.2 consisting of six members is established. It is headed by the Director General & Inspector General of Police-Chairperson. Its functions are defined in Section 22(F) of Maharashtra Police Act which includes posting and transfer of police officers. Thus, the PEB-2 headed by Director General & Inspector General of Police is the Competent Authority for the transfer of the Applicant.

9. Here, one need to bear in mind Section 22N(1)(d) of Maharashtra Police Act which ensures six years tenure in the rank of PSI, API, PI at Commissionerate level other than Mumbai and eight years at Mumbai Commissionerate. As such, the scheme of Maharashtra Police Act is that police personnel should get normal fixed tenure as specified in the Act. In the present case, the Applicant was serving in Thane Police Commissionerate, and therefore, as per Section 22N(1)(d), he was entitled to six years tenure. At the same time, legislature has taken care that police personnel can be transferred mid-term or mid-tenure in special case, in public interest and on account of administrative exigency as envisaged in Section 22N(2) of Maharashtra Police Act.

10. In present case, admittedly, the Respondents have not invoked Section 22N(2) of Maharashtra Police Act. On the contrary, it is explicit from the PEB Minutes that the Applicant was transferred stating that he had completed normal tenure. Whereas interestingly in PEB Minutes what is stated that the Applicant had completed five years and ten months tenure in present posting/unit.

11. It would be apposite to reproduce the Minutes of PEB which is at page No.19 of PB which are as under:-

**पोलीस आस्थापना मंडळ क्र.२ यांच्या बैठकीचे इतिवृत्त.**

खालील अ.क्र.१ ते ४ वरील नमूद निःशस्त्र पोलीस निरीक्षक यांचा संपूर्ण अखंडीत सेवाकालावधी हा मुंबई शहर घटकात झालेला आहे. त्याचप्रमाणे अ.क्र.५ वरील निःशस्त्र पोलीस निरीक्षक यांचा महाराष्ट्र पोलीस अधिनियम क्रमांक ११, दि.०६/०४/२०१५ अन्वये घटकातील विहित कालावधी पूर्ण झालेला आहे. यास्तव, महाराष्ट्र पोलीस कायदा-१९५१, कलम-२२ न अन्वये प्राप्त अधिकाराचा वापर करून पोलीस आस्थापना मंडळ क्र.२ यांनी विचार करून चक्राकार पध्दतीने उपरोक्त पोलीस निरीक्षक यांच्या नावापुढे दर्शविलेल्या घटकात प्रशासकीय कारणास्तव बदली करण्यास सर्वानुमते मान्यता दिली आहे.

अ.क्र.	अधिका-याचे नांव	सध्याची नेमणूक	शेरा	बदलीचा घटक
१.	श्री. नंदकुमार मारुती गोपाळे	बृहन्मुंबई	बृहन्मुंबई - २६ वर्षे, ७ महिने (अखंडीत सेवाकालावधी बृहन्मुंबई येथे)	प्रो.प्र.कॅ. जालना
२.	श्री. सुधीर दत्ताराम दळवी	बृहन्मुंबई	बृहन्मुंबई - २५ वर्षे, ७ महिने (अखंडीत सेवाकालावधी बृहन्मुंबई येथे)	प्रो.प्र.कॅ. नानविज
३.	श्री.सचिन मुरारई कदम	बृहन्मुंबई	बृहन्मुंबई - २५ वर्षे, ७ महिने (अखंडीत सेवाकालावधी बृहन्मुंबई येथे)	टी.आर.टी.आय. औरंगाबाद
४.	श्री. केदारी कृष्णा पवार	बृहन्मुंबई	बृहन्मुंबई - २६ वर्षे, ७ महिने (अखंडीत सेवाकालावधी बृहन्मुंबई येथे)	जि.जा.प्र.त.स. जळगांव
५.	<u>श्री.नितीन वसंत ठाकरे</u>	ठाणे शहर	मपोअ नाशिक - ११ महिने नागपूर शहर - ३ वर्षे २ महिने विसुवि - २ वर्षे ३ महिने रायगड - १ महिना ठाणे ग्रा.-४ वर्षे, ८ महिने गुअवि - १ महिना दविप - १ वर्षे ९ महिने पुणे ग्रामीण - १ वर्ष ३ महिने बृहन्मुंबई - ४ वर्षे, ८ महिने जिजाप्रतस नंदुरबार - ९ महिने सध्याच्या घटकात :- ५ वर्षे १० महिने	जि.जा.प्र.त.स. नंदूरबार

Sd/- (कुलवंत कु.सांरंगल) अपर पोलीस महासंचालक आस्था सदस्य सचिव

Sd/- (राजेंद सिंह) अपर पोलीस महासंचालक का.व.सु.

--- (आनंद लिमये) अपर मुख्य सचिव, गृहविभाग सदस्य

Sd/- (रजनिश सेठ) महासंचालक, अे.सी.बी. अपिल व सुरक्षा

Sd/- (हेमंत नगराळे) पोलीस आयुक्त बृहन्मुंबई म.रा., मुंबई

Sd/- (संजय पांडे) पोलीस महासंचालक, म. राज्य, मुंबई अति.कार्य सदस्यतथा महासंचालक व व्यवस्थापकीय संचालक, म.रा.सु.म.लि., म.राज्य, मुंबई अध्यक्ष

12. It is thus manifest that PEB had transferred the Applicant on the ground that the Applicant has completed normal tenure. Indeed, his period in the present posting in Thane Commissionerate is specifically mentioned by PEB as five years & ten months which is contrary to their own stand that the Applicant had completed normal tenure in the present post.



13. However, in reply on affidavit, the Respondent No.1, realizing illegality cropped in transfer of the Applicant has come with different stand contending that the Applicant had completed more than eleven years and four months in Thane. Indeed, this stand now taken in reply is totally opposite to Minutes of PEB where the Applicant is stated to have completed five years & ten months and attempt is made to salvage the damage.

14. Now, let us see the stand taken by the Respondents that the Applicant was due for transfer which is indeed totally erroneous and contrary to law. In reply, the Respondent No.1 has given details of the posting of Applicant since his entry into service which is at page No.29 of PB :-

In the capacity of	Period	Places	Period
As P.S.I.	17.08.1992 to 30.07.1993	Basic training of P.S.I. at Maharashtra Police Academy, Nashik.	
	17.08.1994 to 14.11.1997	Nagpur City	
	15.11.1997 to 28.02.2000	Special Protection Unit	
	01.03.2000 to 29.04.2000	Raigad	
	<b>31.05.2000 to 22.10.2007</b>	<b>Thane Rural</b>	<b>05 years 05 months.</b>
As A.P.I.	02.11.2007 to 03.12.2007	C.I.D.	
	04.12.2007 to 22.09.2009	A.T.S at Vikhroli Unit, Mumbai	1 years 9 months
	23.09.2009 to 30.12.2010	Pune Rural	<b>03 years and 05 months</b>
	01.01.2011 to 08.05.2011	Mumbai City	
As P.I.	09.05.2011 to 03.06.2014	Mumbai City	
	06.09.2014 to 15.06.2015	District Cast Certificate Scrutiny Committee, Nandurbar	
	20.06.2015 to 06.05.2021	Thane City	<b>05 years and 10 months and 13 days</b>

15. In para 3(b) ....what is stated by Respondent No.1 is material which is as under:-

*“3(b) : That the Applicant has completed more than 11 years and 04 months in Thane i.e. (counting the tenure as P.S.I. w.e.f. 31.05.2000 to 22.10.2007 and the tenure in the cadre of P.I. i.e. w.e.f. 20.06.2015 to 06.05.2021). The said period comes to 16 years and 06 months, after the counting of period 05 years 02 months of adjacent posting of Thane i.e. Mumbai City and A.T.S. Mumbai (Vikroli Unit).*

16. Thus, the Respondent No.1 now tried to contend that since the Applicant had already worked in Thane from 31.05.2000 to 22.10.2007 and thereafter again worked in Thane from 20.06.2015 to 06.05.2021, his total period comes to sixteen years and therefore, he was due for transfer. No doubt, in between 31.05.2000 to 22.10.2007, the Applicant was in Thane as PSI but the said post was in Thane (Rural) and not in Thane Commissionerate. Apart, in 2007 he was transferred to ATS Mumbai from Thane and accordingly he joined at Mumbai. Thus, having considered Applicant's tenure at Thane (Rural), he was already transferred in 2007 from Thane to Mumbai. This being the position that period or tenure of the Applicant from 31.05.2000 to 22.10.2007 in Thane being already considered for his earlier transfer to Mumbai how the said period again can be used or clubbed together to count his period. After his transfer to ATS, Mumbai, he worked there for two years and thereafter transferred to Pune (Rural) where he worked for one year and three months then again he was transferred to Mumbai City from 01.01.2011 to 03.06.2014 for three years and five months. Then he was transferred to District Cast Scrutiny Committee, Nandurbar and worked there from 06.09.2014 to 15.06.2015. In 2015, he was transferred by order dated 12.06.2015 and posted at Thane city. Accordingly, he joined in Thane city on 20.06.2015. He was there till passing of impugned order dated 04.05.2021. After earlier stint of the Applicant in Thane (Rural) from 31.05.2000 to 22.10.2007, he was transferred to various places and thereafter in 2015, he was transferred to Thane city. Needless to mention, Thane Commissionerate and Thane (Rural) are two different entities and have different consequences in

terms of the provisions of Maharashtra Police Act. Suffice to say, earlier period or tenure of the Applicant from 31.05.2000 to 22.10.2007 in Thane (Rural) could not be counted or clubbed with the subsequent positing of the Applicant from 20.06.2005 to 04.05.2021.

17. Now, turning to the positing of the Applicant to Thane city, he was transferred by order dated 12.06.2015 and joined at Thane City in Crime Branch Unit-1 on 20.06.2015. Thus, here comes applicability of Section 22(1)(d) of Maharashtra Police Act which ensures normal tenure as six years on the said post. As such, the Applicant would have completed six years in Thane city on 20.06.2021 only. However, he is transferred by order dated 04.05.2021 and was also relieved immediately on 06.05.2021. Suffice to say, as per PEB Minutes itself, the Applicant has not completed normal tenure of six years in Thane Commissionerate. The Respondent No.1 has not invoked Section 22N(2) of Maharashtra Police Act nor there is any such case of administrative exigency or public interest. Even if the tenure of the Applicant falls short by two months, the impugned order, therefore, cannot be upheld, it being in blatant violation of provision of Maharashtra Police Act.

18. In so far as absence of recommendation of PEB at Commissionerate level for transfer of the Applicant out of Commissionerate area is concerned, Shri A. V. Bandiwadekar, learned Counsel for the Applicant sought to refer Section 22J of Maharashtra Police Act, which is as follows :-

**“22J : Functions of Police Establishment Board at Commissionerate Level**

The Police Establishment Board at Commissionerate Level shall perform the following functions, namely :-

- (a) The Board shall decide all transfers, postings and other service related matters of Police Officers of the rank of Police Sub-Inspector to Police Inspector within the Commissionerate.
- (b) The Board shall be authorized to make appropriate recommendations to the Police Establishment Board No.2 regarding the postings and transfers out of the Commissionerate, of the Police Officers of the rank of Police Sub-Inspector to Police Inspector.

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

19. As stated above, the PEBs are established at various levels in view of Maharashtra Police Act. In present case, the Applicant is transferred by PEB-2 as constituted in terms of Section 22E of Maharashtra Police Act and its functions are defined in Section 22F of Maharashtra Police Act. Whereas, Section 22J speaks about functions of PEB at Commissionerate level. Thus, if police personnel is to be transferred by PEB at the Commissionerate level and the transfer is out of Commissionerate, in that event only Section 22J(b) would attract. Whereas in present case, PEB-2 headed by Director General and Inspector General of Police has recommended for the transfer of Applicant which is higher than the PEB at Commissionerate level. This being the position, in my considered opinion, the recommendation of PEB at Commissionerate level is not at all required since Section 22J applies in respect of the functions of PEB at Commissionerate level. Significantly, there is no such limitation or requirement of recommendation as regard functions of PEB-2. Suffice to say, the ground raised by the learned Counsel for the Applicant that in absence of recommendation of PEB at Commissionerate level, the transfer is invalid is totally misconceived.

20. As regard, absence of one of the member of PEB-2, admittedly, the Additional Chief Secretary who was one of the member of PEB was not consulted. The minutes of PEB were approved by remaining 5 members, in circulation. The minutes of PEB as well as reply of the Respondent No.1 is silent as to on which date Minutes were prepared or signed by a member. None of the member put date below signature. They were obliged to put date below signature to make process fair and transparent. Be that as it may, the Respondents ought to have sent Minutes of PEB to Additional Chief Secretary,

Home for his comment/approval as the case may be. However, he seems to have been completely excluded from the exercise. But it cannot be forgotten that the decision of transfer has been taken unanimously by remaining five members of PEB. Therefore, even if one of the members is not consulted that *ipso-facto* would not render transfer order illegal since, the decisions are required to be taken by majority in absence of any Rules contrary to it. Apart there is nothing to indicate that the Additional Chief Secretary was dissenting. As such, considering the aspects from this angle also non consultation or absence of signature of Additional Chief Secretary on Minutes of PEB would not render transfer order illegal.

21. The submission advanced by learned Counsel for the Applicant that Shri Sanjay Pande being holding only additional charge was not competent to transfer the Applicant holds no water. True, he was at the relevant time working as Director General and Managing Director of Maharashtra State, Security Board, Mumbai and was holding additional charge of the post of Director General and Inspector General of Police, State of Maharashtra. A person holding charge have all administrative powers and no provision is pointed out by learned Counsel for the Applicant that legally he was not competent to issue transfer order. If the post of Director General and Inspector General of Police was vacant and for administrative exigencies, the charge was kept with someone else then he could exercise all the administrative powers. As such, even if Section 157(A) of Maharashtra Police Act as referred by learned P.O. pertains to keeping charge for the post of Commissioner and it does not specifically relate to the charge of post of Additional Director General and Inspector General of Police that hardly matters. Once the Government by administrative order kept charge of the post of Director General and Inspector General of Police with Shri Sanjay Pandey, he cannot be said incompetent to transfer the applicant.

22. Learned P.O. sought to refer the decision of the Hon'ble High Court in ***W.P. No.1277/2016 (Sanjay G. Deshmukh v/s State of Maharashtra )***, decided on 05.05.2016. The perusal of the judgment reveals that in that matter 330 Police Inspectors were transferred on administrative ground to fill up the vacant posts because of administrative exigency and in public interest. It is in that context, mid-term transfer of the petitioners therein from Jalgaon district was upheld. Therefore, this judgment is of little help to the Respondents in the present situation.

23. In view of above, I have no hesitation to conclude that the Applicant had not completed his normal tenure of six years in Thane city but he was transferred without there being any case of administrative exigency or public interest. Indeed, the Director General and Inspector General of Police while recording Minutes of PEB ought to have realized that as per their own record and Minutes, the Applicant had completed five years and ten months which was short for six years and was not due for transfer. However, he shown transferred stating that he has completed normal tenure which is contrary to their own admission in the minutes of PEB. Suffice to say, the PEB as regard transfer of the Applicant seems to have acted very casually and it shows total non application of mind. In reply, attempt was made to salvage the damage taking all together different stand that Applicant's earlier tenure in Thane (Rural) was counted which also factually and legally erroneous. Indeed it is well settled that respondent will have to stand or fall on the basis of reasons recorded in the decision or in contemporary record and it cannot substitute or supplement it by raising some afterthought pleas. Suffice to say, the Applicant's transfer order being mid-tenure and in contravention of express provisions of Maharashtra Police Act is liable to be quashed.

**ORDER**

- (A) Original Application is allowed.
- (B) Impugned transfer order dated 04.05.2021 is quashed and set aside.
- (C) The Applicant be reinstated on the post he is transferred from within two weeks from today.
- (D) No order as to costs.

Sd/-  
**(A.P. Kurhekar)**  
**Member (J)**

Place: Mumbai  
Date: 24.06.2021  
Dictation taken by: V.S. Mane