

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.387 OF 2022

**DISTRICT: THANE
SUBJECT: TRANSFER**

- 1) Shri Sanjay Sonyabapu Kanade,)
Age: 35, Occupation : Govt. service)
Working as Police Naik in office of)
Police Commissioner Navi Mumbai.)
R/O Hansdhvani Complex, Cidco,)
New Colony, LO-4, Room No.1204, Sector-15,)
Kalamboli, Pin – 410 218.)
Mobile – 9702726969.)
email id. sanjaykande302@gmail.com)
- 2) Shri Navnath Sitaram Jadhav,)
Age: 35, Occupation : Govt. service)
Working as Police Naik in office of)
Police Commissioner Navi Mumbai.)
R/O KL-5, Building No.04/08,)
Kalamboli, Sector 02- 410 218.)
Mobile – 8108222853.)
email id. jadhavnavnath819@gmail.com)... **Applicant**

Versus

- 1) State of Maharashtra)
Through The Secretary,)
Home Department, Mantralaya, Mumbai-32.)
- 2) The Commissioner of Police,)
Navi Mumbai Police Commissionerate,)
CBD Belapur, Sector No.10, Opp. RBI,)
Navi Mumbai – 400 161.)
- 3) The Addl. Director General of Police (Traffic),)
Maharashtra State, 6th Floor, Motimahel,)
195, JRD Tata Road, Near CCI Club,)
Churchgate, Mumbai – 400 020.)... **Respondents**

Shri Chandrkant T. Chandratre, learned Advocate for the Applicant.

Shri Ashok J. Chougule, learned Presenting Officer for the Respondents.

CORAM : A.P. Kurhekar, Member (J)

DATE : 13.09.2022.

JUDGMENT

1. The Applicants have challenged transfer order dated 06.05.2021 whereby they were repatriated and transferred to their parent Department, invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

2. The Applicants are serving in the cadre of Police Naik and they were serving on the establishment of Respondent No.2 – The Police Commissioner, Navi Mumbai. In view of their willingness, they were deputed in Highway Traffic Police by order dated 10.12.2018 and accordingly joined Highway Traffic Police. They are entitled for five years tenure in Highway Traffic Police in terms of Section 22 N(1)(b) of Maharashtra Police Act. However, by impugned transfer order dated 06.05.2021, Respondent No.3 – The Additional Director General of Police (Traffic) repatriated them to their parent Department on the ground of default. The Applicants have challenged this order dated 06.05.2021 in the present O.A.

3. Heard Shri C.T. Chandratre, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

4. Learned Advocate for the Applicant Shri C.T. Chandratre sought to assail the impugned order contending that it is not on recommendation of P.E.B. as specialized agencies as notified by the Government by notification dated 18.01.2016. He has further pointed out that in pursuance of default report, preliminary enquiry was conducted and the Applicants were given clean chit, he therefore submits that the ground of

default report did not exist and it is the case of transfer under the garb of repatriation on non-existing ground.

5. Per contra, learned P.O. Shri A.J. Chougule sought to justify the impugned order *inter-alia* contending that it is repatriation order to Original Department and it was necessitated in view of default report.

6. True, the Applicants being Government servant have no vested right to stay at particular place for normal tenure of five years as provided under Section 22N(b) of Maharashtra Police Act and they can be transferred mid-term where it is necessitated on ground of administrative exigencies or public interest as contemplated under Section 22N(2) of Maharashtra Police Act. As such, competent authority for such mid-term transfer is P.E.B. at the level of Highway Traffic Police.

7. The submission advanced by learned P.O. that impugned transfer order is simply repatriation order to the parent Department and it is not transfer order is totally fallacious. Once the Applicants were deputed on Highway Traffic Police there are entitled to normal tenure of five years in Highway Traffic Police in terms of Section 22 N(1)(b) of Maharashtra Police Act. After deputation with Highway Traffic Police if transfer was necessitated then it must be in observance of provision of Maharashtra Police Act. However, if they were sent out of Highway Traffic Police under the garb of repatriation without following the procedure laid down under law, then it would amount to circumventing mandatory provision of Maharashtra Police Act.

8. The Applicants being deputed and posted with Highway Traffic Police, for their transfer the competent authority is P.E.B. constituted at the level of Highway Traffic Police Section 22 J-3 of Maharashtra Police Act provides for Police Establishment Board at the level of specialized agencies and the functions of P.E.B. are defined under Section 22 J-4 of Maharashtra Police Act. Indeed, the Government of Maharashtra by

notification dated 18.01.2016 constituted P.E.B. at Highway Traffic Police and the composition of P.E.B. is as under:-

- a) Additional Director General of Police (Traffic) - Chairperson
- b) Superintendent of Police (Headquarter) - Member
- c) Superintendent of Police (Thane Range) - Member
- d) Superintendent of Police (Pune Range) - Member

It further provides that if none of the above Members is from backward category then the person shall join as Additional Member of the rank of Deputy Superintendent of Police from such category.

9. However, in present case no such minutes of P.E.B. constituted at the level of Highway Traffic Police is forthcoming. There is no such stand in Affidavit-in-Reply that P.E.B. was held and on the recommendation of P.E.B. the Applicants were repatriated.

10. Suffice to say, there is no compliance of Section 22N(2) of Maharashtra Police Act which rendered impugned order bad in law.

11. That apart, default report on the basis of which the Applicants were repatriated itself turned out not substantiated. Preliminary inquiry was conducted by the Department and the Applicants were given clean chit as seen by order dated 03.11.2021 issued by Joint Commissioner of Police, Navi Mumbai. Thus the ground of default report which was the foundation for repatriation / transfer of the Applicant no-more exists. In other words the Applicants were displaced on non-existing grounds as turned out in preliminary enquiry which amount to malice in law.

12. For the aforesaid discussion, I have no hesitation to sum up that impugned order dated 06.05.2021 is arbitrary and in defiance of the

mandatory provision of Maharashtra Police Act and liable to be quashed.
Hence, the order.

ORDER

- A) The Original Application is allowed.
- B) Impugned repartition / transfer order dated 06.05.2021 is quashed and set aside. The Applicants be reposted to the post from which they were displaced within two weeks from today.
- C) No order as to costs.

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

Place: Mumbai
Date: 13.09.2022
Dictation taken by: N.M. Naik.

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