

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.42 OF 2021

**DISTRICT: PUNE
SUBJECT: TRANSFER**

Shri Kiran Kisanrao Harel,)
Aged 33 yrs, working as Police Constable,)
Police Aid Centre, Vadgaon Mawal (Highway Safety)
Patrolling), Pune Highway Security Squad,)
R/o. Hiware, Tal. Shirur, Dist. Pune.)... Applicant

Versus

1) The Additional Director,)
General of Police (Traffic), (M.S.) 6th Floor, Moti)
Mahal Near C.C.I. Club, Opp. Samrat Hotel,)
Churchgate, Mumbai-20.)

2) The Superintendent of Police,)
Pune (Rural), Having Office at Chavan Nagar,)
Pune-8.)... Respondents

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

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

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

DATE : 06.12.2021

ORDER

1. The Applicant namely Shri Kishore Harel has challenged the order dated 29.06.2019 whereby he is shown temporarily shifted from Khed Police Station to Highway Police invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

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

The Applicant is serving in the cadre of Police Constable. By order dated 18.12.2018, he was transferred from Police Head Quarter, Pune to Police Station Khed, Pune (Rural) and accordingly joined at Khed Police Station. He being Police Constable is entitled to five years normal tenure in terms of Section 22N(2) of Maharashtra Police Act. However, by order dated 29.06.2019 he was shifted from Khed Police Station and temporarily attached to Highway Police. This order dated 29.06.2019 is challenged in the present O.A.

3. Shri Arvind V. Bandiwadekar, learned Counsel for the Applicant sought to assail the impugned order dated 29.06.2019 on the following grounds:-

(a) The Applicant's normal tenure is five years in a post, and therefore, in absence of compliance of Section 22N(2) of Maharashtra Police Act, he could not be transferred mid-tenure.

(b) For transfer of Applicant out of district, there has to be compliance of Section 22J(2)(b) of Maharashtra Police Act and it is only by recommendation of Police Establishment Board (PEB)-2, the Applicant could be shifted to another branch out of his district.

4. Per contra, Shri A.J. Chougule, learned Presenting Officer sought to support the impugned transfer order *inter-alia* contending that since there was administrative exigency for services of Police Constables in Highway Police, the Respondent No.1 – Additional Director General of Police, Mumbai sought the list of Police Constables for deputation in Highway Police and on the basis of list forwarded by SP (Rural), Pune, impugned order of deputation has been passed. He further sought to contend that after joining in Highway Police, the Applicant has given undertaking on 07.10.2019 (Page No.83 of PB) which is amounting to consent for transfer in Traffic Police.

5. At the very outset, it needs to be stated that by impugned transfer order dated 29.06.2019 the Applicant was shown attached to Highway Police temporarily without mentioning the period of attachment. Now, the period of more than two years is over and under the garb of temporary attachment, the Applicant is continued in Highway Police. Therefore, the question comes whether such temporary attachment is permissible in law in the teeth of provisions of Maharashtra Police Act and the answer is in negative.

6. Since, admittedly the Applicant was posted at Khed, Pune (Rural) by order dated 18.12.2018 under the provisions of Maharashtra Police Act, he was entitled to five years tenure in a post. In Maharashtra Police Act, important amendments were carried out in view of the directions given by the Hon'ble Apex Court in ***Prakash Singh and others Vs. Union of India & Ors (2006) 8 SCC 1***. Now, let us see the provisions of Maharashtra Police Act which ensures normal tenure as well as also provides for mid-tenure transfer where administrative exigency warrants the same. As per Section 22N (1)(b) police constabulary has normal tenure of five years at one place of posting. For general transfers as well as mid-tenure transfers, the PEBs are established at various levels. Section 22N(2) of Maharashtra Police act provides that in exceptional cases, in public interest and on account of administrative exigencies, the Competent Authority is empowered for mid-term transfer of any Police Personnel of the Police Force.

7. For transfer of Applicant within district, the PEB at district level is competent authority. The functions of PEB at district level are defined in Section 22J-2 of Maharashtra Police Act which *inter-alia* provides that PEB at district level shall decided all the transfers, posting of Police Personnel to the rank of Police Inspector within district police force. Whereas, importantly as per Section 22J (b) the PEB is authorized to make appropriate recommendations to the PEB No.2 regarding postings

and transfers out of the district. In the present case, the Applicant has been transferred out of his department and shifted to Highway Police. The PEB-2 is established as per Section 22E of Maharashtra Police Act which is headed by Director General and Inspector General of Police. Section 22F of Maharashtra Police Act specifically provides that powers of transfers, posting of police officers of the rank of Police Sub-Inspector to Police Inspector vests with PEB-2. Whereas in present case, there was no such recommendations of PEB at district level to PEB -2. It is only on list forwarded by SP (Rural) the Applicant along with others were shifted to Highway Police under the garb of temporary attachment. *Ex-facie* it is not in observance of provisions of Maharashtra Police Act discussed above.

8. Apart admittedly, there is no compliance of Section 22N(2) of Maharashtra Police Act which empowers competent authority to transfer Police Personnel mid-term in exceptional cases or in public interest or on account of administrative exigencies. In the present case, the Applicant has been transferred from Police Station Khed to Highway Police under the garb of temporarily shifting. Such temporary shifting which is now more than 2 ½ years partake character of mid-tenure transfer. It is thus *ex-facie* that Applicant has been transferred under the garb of temporary shifting only to circumvent the provisions of Maharashtra Police Act. Even if, there was some administrative exigency, mid-term transfer could be sustained where it is in consonance and compliance of provision of Section 22N(2) of Maharashtra Police Act which is completely missing in the present case.

9. Insofar as alleged consent given by the Applicant which is at page No.83 of PB is concerned, it is taken from the Applicant on 07.10.2019. The contents are as under:-

हमीपत्र दिनांक :- ०७/१०/२०१९

माझे नांव:- किरण किसन हरेश नेमणूक म.पो.केंद्र जिल्हा - पुणे ग्रामीण

भ्रमणध्वनी क्रमांक:- ७९७२४३५७६८

मा. अपर पोलीस महासंचालक सो.(वा), महाराष्ट्र राज्य, मुंबई यांचेकडील आदेश - अपोमसं II)/४३/प्रलि/पो.कर्म.निवड-पुणे ग्रामीण/२९/२०१८/१८५२ मुंबई दि.२९/०६/२०१९ अन्वये तात्पुरते स्वरूपात महामार्ग पोलीस विभागात निवड करण्यात आलेली असून माझे असून मला संगणकीय कामकाजाचे ज्ञान आहे/नाही. मला चारचाकी वाहन चालविता येते/येत नाही. महामार्गात अडचणीचे वेळी गरज पडल्यास मी चारचाकी वाहन चालवू शकतो /~~चालवू शकत नाही.~~

मी या हमीपत्राद्वारे असे लिहून देतो की मला महामार्ग पोलीस विभागामध्ये तात्पुरत्या स्वरूपात कामकाज करण्याकरीता आदेशीत करण्यात आले असून महामार्ग पोलीस विभागात माझे काम समाधानकारक दिसून आले नाही, अथवा कामात कुचराई करीत असल्याचे किंवा वरीष्ठ कार्यालयात कामकाज करण्यास टाळत असल्याचे अथवा बेशिस्त वर्तणूक केल्याचे निदर्शनास आल्यास कोणत्याही पूर्व सुचने शिवाय तात्काळ मुळ घटकात प्रत्यावर्तीत करण्यात येईल अशी मला समज मिळाली असून या अनुषंगाने माझी काही तक्रार असणार नाही.

समक्ष

Sd/-

(मिलिंद मोहिते)

पोलीस अधीक्षक, महामार्ग सुरक्षा पथक
पुणे प्रादेशिक विभाग पुणे.

Sd/-

सपोफौ/पोहवा/पोना/पोकाँ ब.न.

नेमणूक - म.पो.केंद्र

10. Thus, it was obtained from the Applicant after four months from his temporary shifting. Indeed, importantly after impugned transfer order dated 29.06.2019, the Applicant made representation that he never consented for shifting to Highway Police. Interestingly in impugned order dated 29.06.2019 itself in note, it is specifically stated that names of the Constables who have not given consent or who are facing D.E. should be forwarded to the office for further necessary action meaning thereby the Police Personnel who have given consent were also required to be shifted. Admittedly, the Applicant has not given consent before impugned order and alleged consent letter dated 07.10.2019 cannot be termed as a free consent. It seems to have been obtained from the Applicant under compulsion.

11. The totality of the aforesaid discussion leads me to sum up that impugned order dated 29.06.2019 is in blatant contravention of express provisions of Maharashtra Police Act and is liable to be quashed. Hence the following order :-

ORDER

- (A) Original Application is allowed.
- (B) Impugned order dated 29.06.2019 qua the Applicant is quashed and set aside.
- (C) The Applicant be reinstated on the post from which she was temporarily shifted within two weeks from today.
- (D) No order as to costs.

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

Place: Mumbai
Date: 06.12.2021
Dictation taken by: V.S. Mane.

