

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI**

**ORIGINAL APPLICATION NO.864 OF 2019**

**DISTRICT: PUNE**

**SUBJECT: TRANSFER**

- 1) Shri Ajinkya Dilip Daundkar, )  
Aged 30 Yrs, Working as Police Naik, )  
R/o. Daundkar Niwas, Tal. Khed, Dist. Pune. )  
(Deleted) )
- 2) Shri Kailas Balshiram Kale, )  
Aged 37 Yrs, Working as Police Naik, )  
R/o. Shivkrupa C.H.S., Otur, Tal. Junnar, )  
Dist. Pune. )
- 3) Shri Jyotiram Tanaji Pawar, )  
Aged 30 Yrs, Working as Police Constable, )  
R/o. Behind Adad Building, Nilayam Garden, )  
A/P. Otur, Tal. Junnar, Dist. Pune ) **... Applicant**

**Versus**

- 1) The Superintendent of Police, )  
Pune (Rural). )
- 2) The State of Maharashtra, )  
Through Additional Chief Secretary, )  
Home Department, Having office at )  
Mantralaya, Mumbai-400 032. )
- 3) The Additional Director General of Police (Traffic), )  
(M.S.), 6<sup>th</sup> Floor, Moti Mahal Near C.C.I. Club, )  
Opp. Samrat Hotel, Churchgate, Mumbai-20. ) **Respondents**

Shri Arvind 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 : 15.03.2021.

### **JUDGEMENT**

1. The Applicants have challenged the orders dated 26.07.2019, whereby they were transferred from Otur Police Station to another Police Station in Pune (Rural) and on the same day by another order, they were deputed on the establishment of the Respondent No.3 - Additional Director General of Police (Traffic), invoking jurisdiction of this Tribunal under section 19 of the Administrative Tribunal Act, 1985.

2. Shortly stated facts giving rise to this application are as under:-

Initially the present O.A. has been filed by three Applicants who are serving as Police Naik on the establishment of the Respondent No.1 Superintendent of Police, Pune (Rural). However, name of the Applicant No.1 is deleted, since he did not want to continue with the O.A. As such O.A. is continued in respect of the Applicants No.2 and 3 only. The Applicants No.2 & 3 were transferred and posted at Otur Police Station by order dated 14.12.2014 and 05.11.2015 and accordingly, joined there. Being Police constable, their tenure is five years in terms of Section 22N (b) of Maharashtra Police Act. However, abruptly the Respondent No.1 – Superintendent of Police, Pune (Rural) by order dated 26.07.2019 transferred Applicant No.2 mid-term and mid-tenure to Bhor Police Station invoking Section 22N (2) of Maharashtra Police Act on the ground of alleged mis-conduct. Simultaneously, after passing this order, by second

order dated 26.07.2019, the Respondent No.1 deputed Applicants No.2 & 3 on the establishment of the Respondent No.3 in Highway Police temporarily. Both these orders are challenged by the Applicants in the present O.A.

3. Heard Shri Arvind V. Bandiwadekar, learned Advocate for the Applicants and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

4. Perusal of record reveals that there were allegations of mis-conduct against the Applicants No.2 & 3 and Assistant Police Commissioner, had forwarded preliminary enquiry report dated 10.04.2019 to the Respondent No.1 (Pg No.69 to 72 of P.B.). In view of that preliminary enquiry report, the Police Establishment Board (P.E.B.) at district level headed by the Respondent No.1 in its meeting dated 22.07.2019 transferred the Applicant No.2 from Otur Police Station to Bhore Police Station but deputed him in Highway Police temporarily. In so far as the Applicant No.3 is concerned, he was also deputed in Highway Police in terms of letter of Additional Director General of Police (Traffic) dated 29.06.2019, and therefore, the P.E.B. did not pass any order of his transfer to another Police Station and the decision to that effect was reserved.

5. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to assail the transfer order of the Applicant No.2 from Otur Police Station to Bhore Police Station contending that the constitution of P.E.B. which took the decision of transfer is invalid. In so far as the order of deputation of the Applicant No.2 in Highway Police is concerned, he submits that the

Applicant No.2 could not have been deputed or transferred out of Pune (Rural) without compliance of Section 22J-2 of Maharashtra Police Act which inter-alia provides for transfer of Police Personnel out of Police force without recommendation of P.E.B.-2. As regard deputation to Highway Police, he submits that they could not be sent on deputation without consent.

6. Per contra Shri K.S. Gaikwad sought to justify the impugned transfer of the Applicant No.2 from Otur Police Station to Bhore Police Station, in view of mis-conduct and the decision of P.E.B invoking Section 22N (2) of Maharashtra Police Act. In respect of deputation in Highway Police, she submits that they were deputed temporarily in view of the letter of the Respondent No.3 dated 29.06.2019 and further pointed out that they have later on, given consent for continuation in Highway Police.

7. Thus, what emerges from the pleading and hearing of learned counsels that there are two sets of situation. In so far as the Applicant No.2 is concerned, by impugned order dated 26.07.2019 he was transferred mid-term and mid-tenure from Otur Police Station to Bhore Police Station. Whereas, as regard the Applicant No.3 Mr Pawar, there is no transfer order at another Police Station, since he was deputed in Highway Police. In P.E.B. minutes there is specific mention that if the Applicant No.2 found not willing to work in Highway Police, in that event, the issue of his transfer from Otur Police Station is reserved. Thus, in short the Applicant No.2 is transferred from Otur Police Station to Bhore Police Station and simultaneously he was deputed in Highway Police. Whereas,

there is no transfer order of the Applicant No.3 and he was only deputed in Highway Police.

8. In so far as deputation from regular Police force to Highway Police is concerned, it appear from letter dated 29.06.2019 (reference of which is at Pg. 53 of P.B.) that Police Personnel who are willing should be only considered. Admittedly, no such willingness was given by the Applicants before issuance of deputation order. The willingness letter which is at pg. 103 and 106 of P.B. purportedly dated 24.12.2019 and 07.02.2020 are subsequent to impugned deputation order dated 26.07.2019. Indeed, the Applicants denied to have given any such undertaking. Apart the legality and validity of deputation order needs to be adjudicated in the light of Section 22J-2 of Maharashtra Police Act leaving aside the aspect of consent.

9. Admittedly, the Applicants No.2 & 3 were serving as Police Constable on the establishment of the Respondent No.1 – Superintendent of Police, Pune (Rural). True, the transfer is incident of service and the Government servant cannot ask for particular posting as of right. However, now the transfers of Police Personnel are governed by the provisions of Maharashtra Police Act which *inter-alia* provides fixed tenure of Police Personnel as well as the procedure for their regular as well as mid-tenure transfers. There is complete mechanism provided under the provision of Maharashtra Police Act to meet any such contingencies of transfer within force as well as out of force. P.E.B is established at district level, Commissioner level, specialized agencies etc. Here Section of 22J-2 of Maharashtra Police Act are material, which are as follows.

**“22J-2. Functions of Police Establishment Board at District Level**

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

*(a) The Board shall decide all transfers, postings of Police Personnel to the rank of Police Inspector within the District Police Force.*

*(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 District.*

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

10. It is thus explicit from Section 22J-2 (a) that where the transfer of Police Personnel is upto the rank of Police Station within district Police force is concerned, the P.E.B at district level is competent. However where the posting of transfer is out of district Police force, there has to be with recommendation by P.E.B at district level to P.E.B.-2 as provided in Section 22J-2 (b). P.E.B.-2 is constituted at the level of Director General of Police in terms of Section 22E of Maharashtra Police Act.

11. In present case, the Applicants were transferred out of district Police force under the guise of temporary deputation in Highway Police. They were deputed by order dated 26.07.2019 and continued till today. Needles to mention that temporary deputation is always for short or specific period and it should come to an end after expiration of said period. However in present case, the period more than twenty-one months is over, they are continued on deputation. As such, in law, it amounts to transfer under the disguise of deputation only to subvert of provision of Maharashtra Police Act. It has trapping of transfer in the eye of law.

12. Learned P.O. fairly concedes that there is no such recommendation of P.E.B at district level to P.E.B-2 as contemplated under Section 22J-2 (b) of Maharashtra Police Act. She has tendered minutes of meeting dated 25.06.2019 which was held at the level of the Respondent No.1, while recommending names of Police Personnel to Highway Police. As such, transfer/deputation from district Police force to Highway Police without making recommendation to P.E.B.-2 cannot be legal and valid. Suffice to say, there is no compliance of Section 22J-2 of Maharashtra Police Act which render the order of deputation invalid and unsustainable in law.

13. Needles to mention when law provides for doing particular exercise in particular manner then it has to be followed without any exception or latitude. The amendments in the form of Section 22J-2 and other important amendments are incorporated in Maharashtra Police Act in pursuance of direction given by Hon'ble Apex Court in **Prakash Singh and others Vs. Union of India and others (2006) 8 SCC 1.** Suffice to say, there being no compliance of mandatory provision of Section 22J-2 of Maharashtra Police Act, the order of deputation of the Applicants No.2 & 3 in Highway Police is bad in law.

14. In respect of the Applicant No.2, the P.E.B. at district level had recommended his transfer from Otur Police Station to Bhore Police Station on the ground of default report. Once the order of deputation in Highway Police goes, transfer order from Otur Police Station to Bhore Police Station revives. Therefore, now question comes as to whether transfer of the

Applicant No.2 from Otur Police Station to Bhor Police Station is legal and valid.

15. True, the Applicant No.2 has not completed five years of tenure at Otur Police Station since he joined there on 14.12.2014. As such, it is mid-term as well as mid-tenure transfer. In this behalf, Section 22N 2 of Maharashtra Police Act empowers the P.E.B. to transfer Police Personnel mid-term in exceptional case, public interest and on account of Administrative exigencies. In present case, there is default report against the Applicant No.2. The Assistant Police Inspector, Otur Police Station had submitted detailed enquiry report dated 10.04.2019 (Pg. No. 69 to 72) about mis-conduct of the Applicant No.2 to Superintendent of Police, Pune (Rural). The perusal of minutes of P.E.B. dated 22.07.2019 (Pg. 41 to 50) reveals that the said report was placed before P.E.B. and considering the same, the P.E.B. resolved to transfer Police Personnel including Applicant No.2., mis-conduct attributed to the Applicant No.2 is as follows:-

“पो.ना.१९२४/कैलास बाळशिराम.काळेनेमणुक ओतर पोलीस स्टेशन यांनी खालील प्रमाणे कर्तव्यामध्ये केलेली कसुरी व हलगर्जीपणा खालील प्रमाणे.

- ०३) ०१) दिनांक १९/४/२०१९ रोजी मिळालेल्या बातमीनुसार कायद्यामधील असलेल्या तरतुदीप्रमाणे कारवाई केली नाही. मा.उप-विभागीय पोलिस अधिकारी जुन्नर विभाग जुन्नर यांनी कळवलेले नाही व त्यांची परवानगी घेतली नाही.
- ०२) श्री रोहन किरण ६ वय ३६ वर्ष उत्तुर तालुका जुन्नर जिल्हा पुणे २ अनिकेत अंबादास मोहिते २३ वर्ष देव गल्ली लातूर लातूर यांना हाताने मारहाण केली बाबत त्यांनी चौकशी मध्ये सांगून दाबा मध्ये लिहून दिलेली आहे.
- ०३) मुंबई पोलीस अधिनियम अंतर्गत ०१) अनिकेत अंबादास मोहिते वय २३ वर्ष रा.देवगल्ली ओतूर रा.देवगल्ली ओतूर ९७६३८२२९७२ ०२) गंगाराम बबन ठोसर ५३ वर्ष रा.बौद्ध



वस्ती ओतुर ता.जुन्नर मा.नं.९९२२३९९० यांनी दिनांक ०९/०४/२०१९ रोजी १७/१० वा.चे सुमारास सार्वजनिक ठिकाणी आरडा ओरडा करून मिळून आल्याने त्यांचेवर मु.पो.अधि.कलम ११०/११२ अन्वये फिर्यादी होवुन खटला दाखल केलेला आहे. परंतु त्यांनी कोणत्या ठिकाणी आरडा ओरडा केली ते ठिकाण नमूद केले नाही सदरचा खटला दाखल केल्यानंतर किंवा करण्यापूर्वी प्रभारी अधिकारी यांना माहिती दिलेली नाही. तसेच दिनांक ०९/०४/२०१९ रोजी १७/१० दहा वाजता ०१) अनिकेत अंबादास मोहिते ०२) गंगाराम बबन ठोसर हे दोघेजण ओतुर पोलीस स्टेशनमध्ये ओतूर पो.स्टे.गु.र.न.२०१९ च्या गुन्ह्याचे वेळीच त्यांना आणल्याचे चौकशीमध्ये निष्पन्न होत असून त्यांचेवर केलेली कारवाई ही वरील अपचारी पोलिसांनी त्यांना मारहाण केल्यामुळेच खोट्या स्वरूपामध्ये करून बचाव करण्यासाठी केलेली आहे असे माझे प्रा.चौ.अधिका-याचे आमचे मत आहे. तसेच सदरचा खटला दाखल करण्यापूर्वी अगर नंतर प्रभावी अधिकारी ओतुर पोलीस स्टेशन यांना तोंडी अथवा लेखी कळविलेले नाही.

- ०४) आम्ही केलेल्या प्राथमिक चौकशीमध्ये साक्षीदार क्र.१५ व ओतुर ग्रामपंचायतीचे सदस्य नामे आशिष शामकुमार शहा यांनी अपचारी साबळे, दौंडकर, पवार, काळे यांचेमुळे ओतुर या गावातील शांतता बिघडत चाललेली आहे व ओतुर गावातील राजकीय वातावरण दिवसेंदिवस दूषित होत चालले आहे असे स्पष्ट जबाबमध्ये नमूद केले असून अपचारी यांना ओतूर पोलीस स्टेशन येथे ठेवल्यास ते निश्चितच कायदा व सुव्यवस्थेचा एखादा गंभीर स्वरूपाचा प्रकार करतील व त्यामुळे झालेल्या घटनेमुळे पोलिसांची जनसामान्यात प्रतिमा मलीन होईल असे आमचे प्राथमिक अधिकारी या नात्याने मत झालेले आहे.
- ०५) अपचारी यांचे पोलीस खात्यात दाखल झालेपासून अभिलेखाची माहिती लेखी स्वरूपात कार्यालयातुन मागुन घेतली असता सेवाकालामध्ये ते एक वेळानिलंबितझालेले असून त्यांना सौम्य प्रकाराच्या एक शिक्षाझालेल्या आहेत. त्यांना यापूर्वी शिक्षा देवुनही त्यांचे वर्तनात सुधारणा झालेले

नसल्याचे दिसून येत आहे.”

16. Report was placed before P.E.B. and after deliberation, P.E.B. recorded the minutes of meeting which are as under:-

“१) पोना ३८८ / काळुराम हरी साबळे, पोना १९२४ /कैलास बाळशिराम काळे, ३) पोना २०६९ /अजिंक्य दिलीप दौंडकर, ४) पोशि २२४५ / अतुल बाळू राऊत, ५) पोशी ५२० / ज्योतीराम तानाजी पवार सर्व नेमणूक - ओत्तुर पो.स्टे पुणे ग्रामीण यांना कायदयाचे ज्ञान अवगत असताना देखील शिस्तप्रिय पोलीस खात्यात त्यांनी गंभीर स्वरूपाची कसुरी केली आहे. शासकीय सेविकांनी पदीय कर्तव्य बजावत असतांना उच्च नैतिक मानके, सचोटी, गुणवत्ता आणि निपक्षपातीपणा या तत्वांचे अनुकरण केलेले नसल्याने आणि त्यांना वरिष्ठांच्या मौलीक सूचनांकडे सुद्धा जाणीवपूर्वक दुर्लक्ष करून कसुरी केल्याचे सिद्ध झालेले आहे. त्यांनी शासकीय सेवा समर्पित होवून करण्याऐवजी पोलीस खात्यासारख्या शिस्तीच्या खात्यामध्ये पोलीस खात्याची जनमाणसात प्रतिमा मलीन केली आहे. त्यामुळे या प्रकरणी अपवादत्मक परिस्थिती निर्माण झालेली आहे. त्याअनुषंगाने त्यांच्याविरुद्ध कडक स्वरूपाची कारवाई करणेबाबत आस्थपना मंडळाने एकमताने विचार करून निर्णय घेण्यात आला.

त्या अनुषंगाने, दिनांक २२/०७/२०१९ रोजी सदर बैठकीत अस्थापना मंडळाने वस्तुस्थिती व परिस्थितीचा सखोल विचारविनिमय करून व महाराष्ट्र शासन राजपत्र व असाधारण भाग चार, फेब्रुवारी १६, २०१५/माघ, २७ शके १९३६ मधील नमूद असलेल्या जिल्हा पोलिस अस्थापना मंडळाने कार्यवाही करण्यात करणेबाबत सुचनेमधील तरतुदीच्या अनुषंगाने, अपवादत्मक परिस्थितीत कोणतीही गंभीर तक्रार, अनियमितता, कायदा व सुव्यवस्थेच्या प्रश्नांच्या बाबतीत, सर्वोच्च सक्षम प्राधिकरण, संबंधित अस्थापना मंडळाच्या कोणत्याही शिफारशी शिवाय, कोणत्याही पोलीस कर्मचा-यांची बदली करू शकेल असे नमूद आहे. सदर प्रकरणी प्राथमिक चौकशीच्या अनुषंगाने, उपरोक्त कर्मचा-यां विरुद्ध सिद्ध झालेल्या गंभीर कसुरीच्या अनुषंगाने १) पोना ३८८ / काळुराम हरी साबळे, पोना १९२४ /कैलास बाळशिराम काळे, ३) पोना २०६९ /अजिंक्य दिलीप दौंडकर, ४) पोशि २२४५ / अतुल बाळू राऊत, ५) पोशी ५२० / ज्योतीराम तानाजी पवार यांना ओत्तुर पो.स्टे पुणे ग्रामीण

या ठिकाणी कर्तव्यास कायम ठेवल्यास त्यांच्या कडून गंभीर स्वरूपाची घटना घडून प्रशासकीय कामकाज, कायदा व सुव्यवस्था भंग होण्याची शक्यता नाकारता येत नसल्याने त्यांची ओतूर पोलीस ठाणे येथून या घटकातिल अन्य उचित पोलीस ठाण्यांत बदली करण्याचे अस्थापना मंडळाने एकमताने निर्णय घेतला आहे. त्या अनुषंगाने १) पोना ३८८ / काळुराम हरी साबळे, पोना १९२४ /कैलास बाळशिराम काळे, ३) पोना २०६९ /अजिंक्य दिलीप दौंडकर, ४) पोशि २२४५ / अतुल बाळू राऊत, ५) पोशी ५२० / ज्योतीराम तानाजी पवार यांच्या मा.अपर पोलीस महासंचालक (वाहतूक), महाराष्ट्र राज्य मुंबई यांनी दिनांक २९/६/२०१९ रोजीच्या आदेशान्वये या घटकातून महामार्ग सुरक्षा पथकात निवड केल्याने सदर दोन्ही कर्मचा-यांना महामार्ग सुरक्षा पथकात हजर होण्यासाठी कार्यमुक्त करण्याचा निर्णय घेण्यात आला तसेच उर्वरित १) पोना ३८८ / काळुराम हरी साबळे, पोना १९२४ /कैलास बाळशिराम काळे, ३) पोना २०६९ /अजिंक्य दिलीप दौंडकर, यांच्या खालील प्रमाणे बदल्या करण्याचा निर्णय घेण्यांत आला.

अ. क्र.	हुद्दा/बक्कल नंबर	पोलीस कर्मचार्यांचे नाव	सध्याचे कर्तव्याचे ठिकाण	नवीन नियुक्तीचे ठिकाण
१	२	३	४	५
१	पोशि - २०६९	अजिंक्य दिलीप दौंडकर	ओतुर पो. स्टे.	यक्त पो. स्टे.
२	पोशि - १९२४	कैलास बाळशिराम काळे	ओतुर पो. स्टे.	भोर पो. स्टे.
३	पोशि - ३८८	काळुराम हरी साबळे	ओतुर पो. स्टे.	वेलहा पो. स्टे.

तसेच, मा.अपर पोलीस महासंचालक (वाहतूक), महाराष्ट्र राज्य, मुंबई यांच्याकडील दि.२९/०६/२०१९ रोजीच्या आदेशास अनुसरून १) पोशि २२४५ / अतुल बाळू राऊत, २) पोशी ५२० / ज्योतीराम तानाजी पवार या घटकातून महामार्ग सुरक्षा पथकात कर्तव्यकामी ईच्छूक नसल्याचे सिद्ध झाल्यास त्यांच्या ओतूर पोलीस ठाणे येथून या घटकातील उचित पोलीस ठाण्यांमध्ये बदल्या करण्याचा निर्णय राखून ठेवण्यात आला आहे. अस्थापना मंडळाने उपरोक्त प्रमाणे एकमताने निर्णय घेतल्यानंतर अध्यक्ष महोदयांनी सर्व सदस्यांचे आभार मानले व बैठक संपुष्टात आल्याचे घोषित केले.”

17. Thus the conduct of the Applicant No.2 found unbecoming to police inviting transfer and his continuation at Otur Police Station found not in the interest of the administration. In other words the P.E.B. unanimously resolved, to transfer of Police Personnel including the Applicant to different Police Station so as to avoid further law and order problem as well as to maintain discipline in the department.

18. Indeed, where the allegations made against a Government servant are of serious nature, insistence of regular D.E. for the purpose of effecting transfer is totally unwarranted. The question whether employee could be transferred to a different division is necessarily a matter for the employer to consider depending upon administrative necessities and to find out solution for the problem faced by the administration. The Tribunal or Court should not sit in appeal and should not substitute opinion or decision taken by competent authority. The Hon'ble Supreme Court in **(2004) 4 SCC 245 (Union of India & Ors. Vs. Shri Janardhan Debanath & Anr.) decided on 13.02.2004** held that whether there was any misbehavior is a question, which can be gone into in the departmental proceeding and for the purpose of effecting transfer, holding of elaborate enquiry to find out whether there was any such misconduct is unnecessary and what is needed is the *prima-facie* satisfaction of the competent authority. The Hon'ble Supreme Court further held that if elaborate enquiry is to be insisted upon, the very purpose of transfer of employee in public interest or exigencies of administration to enforce decorum and to ensure probity would get frustrated.

19. The requirement is of satisfaction of the competent authority. Needless to mention that existence of reasons is a matter capable of objective verification. Whereas, the satisfaction as to the reason is a matter of subjective satisfaction. Once the test of existence of reason is satisfied, the subjectivity of satisfaction cannot be gone into by the Tribunal unless it is a case of *malafide* exercise of power or there is something to show that the decision is arbitrary. In the present case, in view of cogent material on record, it is nigh impossible to say that the PEB had any malice against the Applicant and transfer is in colourable exercise of power.

20. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to pick hole in the constitution of P.E.B. contending that as per Section 22 J-1, P.E.B. at district level should have Sr. most Additional Superintendent of Police as one of the Member of P.E.B. According to him Shri Vivek Patil who was one of the Member of the P.E.B. was not Sr. most Additional Superintendent of Police in Pune (Rural), as Mr. Jayant Meena was Sr. most Additional Superintendent of Police. He further sought to contend that one of the Member of P.E.B. should have been from backward class and only because Member Secretary belongs to backward class, it is not in consonance in Section 22J-1 of Maharashtra Police Act.

21. Indeed, there is nothing on record to establish that Shri Vivek Patil, Additional Superintendent of Police, Pune (Rural) who was one of the Member of P.E.B. was not Sr. most Superintendent of Police and someone else was senior to him. Even assuming for a moment that there was

another officer Sr. to him that itself will not render the decision taken by P.E.B. illegal.

22. As per Section 22J-1, the P.E.B. at district level shall consists of three Members headed by Superintendent of Police and one of the Member should be from backward class. If none is from backward class then there should be appointment of Additional Member of the rank of Deputy Superintendent of Police belonging to backward class. In present case, Member Secretary, Mr. Anil Lambhate himself was from backward class as specifically mentioned in the minutes of P.E.B. I, therefore, see no substance in the submission advanced by learned Advocate for the Applicant that the constitution of P.E.B. was defective.

23. The submission advanced by learned Advocate for the Applicant that P.E.B. has invoked Section 22N (d) and not Section 22N-2, and therefore, impugned transfer order is invalid is misconceived and fallacious. Section 22N (d) pertains to the powers of State Government for transfer of Police Personnel upon certain contingencies enumerated in clause (a) to (e). Whereas in present case, the matter falls within the ambit of Section 22N (2) of Maharashtra Police Act which is as follows:-

*(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 :*

24. As such quoting of wrong provision or inadvertent mistake does not render the transfer order invalid, since the facts elaborated above clearly attract Section 22N-2 of Maharashtra Police Act. Indeed Respondent in

reply made it clear that transfer order was issued invoking Section 22N-2 of Maharashtra Police Act.

25. The cumulative effect of the discussion leads me to conclude that the order of deputation of the Applicants No.2 & 3 in Highway Police by order dated 26.07.2019 is unsustainable in law and liable to be quashed. However, in so far as, order of the Applicant No.2 for transferring him by order dated 26.07.2019 from Otur Police Station to Bhor Police Station cannot be faulted with and the challenge is devoid of merit. Respondent No.1 is at liberty to take suitable action in respect of transfer of the Applicant No.3 by following due process of law as reserved in minutes of P.E.B. dated 22.07.2019. O.A. is, therefore, allowed partly.

**ORDER**

- i. Original Application is allowed partly.
- ii. Order of deputation of the Applicants No.2 & 3 dated 26.07.2019 is quashed and set aside.
- iii. Challenge to the transfer order of Applicant No.2 from Otur Police Station to Bhor Police Station fails. In view of cancellation of his deputation in Highway Police, he be posted in Bhor Police Station within two weeks from today.
- iv. The Applicant No.3 shall be reposted in Otur Police Station in two weeks from today.
- v. No order as to costs.

Sd/-

**(A.P. Kurhekar)**  
**Member (J)**

Place: Mumbai  
Date: 15.03.2021  
Dictation taken by: N.M. Naik.