

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL****NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 902/2021**

Sachin Kisanrao Lule,  
Aged about 37 years, Occ –Service,  
R/o Padmavati Nagar, Wani,  
District Yavatmal.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
through Additional Chief Secretary,  
Home Department,  
Mantralaya, Mumbai-440 032.
- 2) The Superintendent of Police,  
Yavatmal.
- 3) Gajanan Karewad,  
Aged about 38 years, Occ-Service,  
R/o C/o Police Station, Shirpur,  
District Yavatmal.

**Respondents**

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Shri S.P. Palshikar, Ld. counsel for the applicant.

Shri S.A. Deo, Ld. C.P.O. for respondent Nos. 1 and 2.

Shri S.N. Gaikwad, learned counsel for respondent No.3.

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**Coram:- Hon'ble Shri M.A. Lovekar, Member (J).**

**Dated: - 17<sup>th</sup> January 2022.**

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Heard Shri S.P. Palshikar, Ld. counsel for the applicant,  
Shri S.A. Deo, Ld. C.P.O. for respondent Nos. 1 and 2 and Shri  
S.N. Gaikwad, learned counsel for respondent No.3.

2. In this O.A., the applicant has challenged the order dated 29.9.2021 (Annexure A-2) transferring him from Police Station, Shirpur to Control Room, Yavatmal.

3. Case of the applicant—

(i) Applicant entered Government service as Police Constable on 25.1.2003. He was promoted to the post of P.S.I. through M.P.S.C. on 30.7.2011. On 7.1.2017, he was promoted to the post of A.P.I. His service record is clean.

(ii) By order dated 30.10.2020 (Annexure A-1), he was transferred from Lohara Police Station to Shirpur Police Station.

(iii) As per Section 22 of the Maharashtra Police Act, normal tenure of A.P.I. is two years at a police station or branch.

(iv) By the impugned order, the applicant was transferred before completion of two years.

(v) On 23.9.2021, a truck carrying stolen coal was nabbed. Writer of the applicant lodged FIR (Annexure A-3). Driver of the truck and thereafter owner of the truck were arrested. The applicant was investigating the said crime. Thereafter, S.D.P.O. Shri Patil who was holding additional charge of Wani informed the applicant and he himself took over investigation of aforesaid crime.

(vi) The impugned order is contrary to the G.R. dated 29.7.2021 (Annexure A-4) which stipulates that order of transfer can be issued only upto 30.8.2021 and not afterwards.

(vii) Respondent No.3 who is transferred to Police Station, Shirpur in place of the applicant had also not completed tenure of two years at Local Crime Branch, Yavatmal. From this, it can be inferred that the impugned order was passed only to accommodate respondent No.3 on the post held by the applicant.

(viii) In the impugned order, reason for transfer of the applicant is shown to be dereliction (Kasuri). Before passing such remark, which is punitive in nature, no show cause notice was given to the applicant. This was clearly in breach of principles of natural justice.

(ix) Applicant was sanctioned leave from 27.9.2021 to 30.9.2021. This was communicated to him vide Annexure A-5. Respondent No.3 took over charge of transferred post rather hastily i.e. at about 4.00 a.m. of 30.9.2021. This was malafide as well as contrary to Rule 29 of the Maharashtra Civil Services (General Conditions of Service) Rules, 1981.

(x) Applicant is still on leave. He has not signed C.T.C. Respondent No.3 took over charge in his absence illegally.

(xi) For all these reasons, the impugned order to the extent of transfer of the applicant and respondent No.3 is required to be quashed and set aside.

4. Reply of respondent No.2 is at pages 45 to 62. It contains following grounds--

(i) The impugned order squarely fits within the four corners of Section 22 (N) of the Maharashtra Police Act.

(ii) Respondent No.3 joined on the post of P.S.O., Shirpur on 30.9.2021 as shown in joining report (Annexure R-2-V).

(iii) Service record of the applicant is anything but unblemished. Thrice, he has been punished by holding enquiry.

(iv) On 29.9.2021, meeting of District Police Establishment Board, Yavatmal was held. In this meeting, *inter alia* various complaints received against the applicant were considered. Only thereafter the impugned order was passed as provided U/s 22 (N) (2) of the Maharashtra Police Act before completion of normal tenure.

(v) The impugned order refers to punishment imposed on the applicant on 4.8.2021 and 2.9.2021. It also refers to act of dereliction of duty and disobedience attributed to the applicant.

(vi) In preliminary enquiry held against the applicant by SDPO, Pandharkawada, it was revealed that information regarding a truck carrying stolen coal was furnished by some local persons, no entry was taken in station diary about receipt of said information, on the contrary, attempt was made to show to the superiors that the truck was nabbed solely on the initiative of the applicant, initially only driver of the truck was arrested and owner of the truck was arrested

only when the applicant realised that attempt to shield the owner would boomerang. Report of SDPO, Pandharkawada containing these details is at Annexure R-2-II.

(vii) In the aforesaid background, respondent No.2, by order dated 29.9.2021 (Annexure R-2-III) asked SDPO, Pandharkawada to take over investigation of Crime No. 254/2021 registered at Police Station, Shirpur.

(viii) Three orders collectively marked (Annexure R-2-IV) imposing punishment on the applicant falsifies his assertion that his service record is clean.

(ix) In the matter of taking over charge (by respondent No.3), no statutory Rule was breached. The applicant was duly informed as provided under Rule 29 of the M.C.S. (General Conditions of Service), Rules.

(x) The applicant has not yet joined on the new post. Such conduct is contrary to the law laid down by the Hon'ble Supreme Court in "**Somesh Tiwari V/s Union of India (2009) 2, SCC 592.**"

(xi) This was a fit case for the competent authority vested with requisite powers to invoke Section 22 (N) of the Maharashtra Police Act for transferring the applicant.

(xii) For all these reasons, application deserves to be dismissed with exemplary costs.

5. By filing reply which is at pages 79 to 84, respondent No.3 has, apart from refuting allegations levelled against him, contended that there is no substance in any of the contentions raised by the applicant. He has specifically stated about charge taken by him on 30.9.2021 pursuant to the impugned order.

6. Relevant portion of Section 22(N) of the Maharashtra Police Act is as under:-

22(N). **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) x x x

(b) x x x

(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) x x x

(e) x x x

The competent authority for the general transfer shall be as follows, namely :-

<b><u>Police Personnel</u></b>	<b><u>Competent Authority</u></b>
(a) x x x	x x x
(b) x x x	x x x
(c) Officers up to Police Inspector.	(c) Police Establishment Board at Commissionerate Level.

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 :-

<b><u>Police Personnel</u></b>	<b><u>Competent Authority</u></b>
(a) x x x	x x x
(b) x x x	x x x
(c) x x x	x x x
(d) x x x	x x x
(e) Police Personnel up to the rank-----Police Estt. Board of Police Inspector for transfer within the district.	at District level.

7. Section 29 of the M.C.S. (General Conditions of Service) Rules reads as under:-

**“29. Relieving Government servant to intimate probable date of joining to the Government servant to be relieved—**Every relieving Government servant is responsible for informing the Government servant to be relieved, at the earliest possible moment, of the date when he will be in a position to receive charge, and it is the duty of the Government servant to be relieved to be in readiness to deliver charge on that date.”

**31.** Charge must be handed over at the headquarters, both relieved and relieving Government servant to be present.

8. It was submitted by Shri S.P. Palshikar, Ld. counsel for the applicant that the impugned order is *ex facie* punitive in nature, since in it, reason for transfer is stated to be “dereliction” and, therefore, it cannot be sustained for want of previous show cause notice. The impugned order is passed U/s 22 (N) of the Maharashtra Police Act. It is not in dispute that it is passed by the Competent Authority. It cannot be disputed that the Competent Authority has powers to resort to this provision if any of the contingencies stipulated therein arises. Therefore, only it will have to be seen whether invocation of this power in the instant case falls within the four corners of said enabling provision.



9. It was further argued by Shri S.P. Palshikar, Ld. counsel for the applicant that the applicant was already punished thrice for alleged acts of dereliction and since the impugned order also appears to have been passed as a punitive measure, it cannot be sustained because it would amount to imposing multiple punishment for the same act. This submission has no merit. The applicant was punished thrice for acts which have no nexus with the incident which led to passing of the impugned order. The incident on which the impugned order is founded is subsequent and separate.

10. According to Shri S.P. Palshikar, Ld. counsel for the applicant, the impugned order defies the prescription contained in G.R. dated 29.7.2021 (A-4). As per this G.R., outer limit for passing orders of transfer was till 30.8.2021. Question is whether this G.R. will apply to transfers effected by the Competent Authority by exercising powers U/s 22 (N) of the Maharashtra Police Act. This question will have to be answered in the negative. As is apparent, this G.R. applies to general transfers only. It cannot be pressed into service to assail transfers effected U/s 22 (N) of the Maharashtra Police Act. Any other interpretation of this G.R. would result in placing limitation on powers created and recognised by a Statute which is obviously not permissible under the law.

11. The applicant has relied on the judgments dated 15.3.2021 and 14.10.2021 passed by this Tribunal in O.A. Nos. 722/2020 and 803/2018, respectively. Order passed in O.A. No. 722/2020 is at Annexure A.6. This was not a case of transfer U/s 22 (N) of the Maharashtra Police Act. On facts, this Tribunal concluded that repeated transfers of the applicant amounted to harassment. The applicant in the instant case can succeed only by showing that recourse to Section 22 (N) of the Maharashtra Police Act while passing the impugned order was unwarranted and unjustified. So far as the judgment in O.A. No.803/2018 is concerned, the applicant has relied on the following observations:-

*“It is nowhere the case of the respondents that at any point of time, any show cause notice or Memo was issued to the applicant pointing out any such deficiencies in his performance or failure to detect crime registered in the Police Station.”*

These observations were made having regard to the facts of the case. In the instant case, it will have to be decided on facts whether the Competent Authority rightly exercised powers under Section 22 (N) of the Maharashtra Police Act.

12. Learned C.P.O. has relied on the judgment dated 22.12.2018 passed by the Bombay High Court in Writ Petition

No.5320/2018. In this case, on consideration of facts and law, it was observed—

*“In the affidavit in reply to the petition, it has been stated that some serious complaints were received against the petitioner and others. The transfer has, therefore, been made. It would be nothing short of an administrative exigency. By virtue of Section 22 (N) of the Maharashtra Police Act, the mid-term transfer on account of administrative exigency and in public interest can be made by the Competent Authority.”*

13. There is ample material on record to which I have adverted while setting out contents of reply of respondent No.2, to demonstrate that the Competent Authority was justified in exercising powers U/s 22 (N) of the Maharashtra Police Act.

14. According to Shri S.P. Palshikar, Ld. counsel for the applicant, the manner in which respondent No.3 took charge hastily and in the absence of the applicant, clearly exposes malafides and it further shows that this was done in contravention of Rules 29 and 31 of the M.C.S. (General Conditions of Service) Rules. I have quoted Rule 29 as well as heading of Rule 31 of these Rules. Latter part of Rule 29 of the General Conditions of Service Rules lays down that it is the duty of the Government servant to be relieved to be in readiness to deliver charge on that date. It is the case of the

applicant that he was not intimated in time about the transfer. On this point, reply of respondent No.2 is as follows:-

“It is respectfully submitted that, in the transfer order dated 29.9.2021 itself, it is intimated to relieve the officer who is transferred with immediate effect and also intimated that the concerned transferred officer to take immediate charge of transferred post and to submit a report to that effect to the office of answering respondent No.2. As such, the respondent No.3 followed the transfer order scrupulously and immediately accepted the charge of Shirpur Police Station on 30.9.2021.”

The details set out above have not been controverted by the applicant. Record shows that respondent No.3 took charge (from the person who was holding charge of the applicant in his absence) on 30.9.2021. The impugned transfer order stipulates that the charge was to be taken / given immediately. The applicant, inspite of having been intimated chose to remain absent. He cannot be allowed to take benefit of what he himself failed to do.

14. To sum up, while passing the impugned order transferring the applicant, the Competent Authority was justified in taking recourse to 22 (N) of the Maharashtra Police Act. There is nothing on record to conclude that respondent No.3 hastily took charge in the absence of the applicant and this act was actuated by

malafides. For these reasons, application is liable to be dismissed.

Hence, the following order:-

**ORDER**

1. The Original Application is dismissed.
2. No other as to costs.

(M.A.Lovekar)  
Member (J)

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