

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.1240 OF 2023**

**DISTRICT : PUNE**

**Sub.:- Transfer**

Smt. Ujwal Arun Vaidya. )  
Age : 43 Yrs, Working as Deputy )  
Superintendent of Police, Satara, )  
Anti-Corruption Bureau, Sadar Bazar )  
Satara and residing at S-3, Prime Society, )  
1006, Sus Gaon, Pune – 411 021. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through Addl. Chief Secretary, )  
Home Department, Mantralaya, )  
Mumbai – 400 032. )
2. The Director General of Police, )  
Maharashtra State, Mumbai, )  
Maharashtra Police Headquater, )  
Shahid Bhagat Singh Marg, Colaba, )  
Mumbai – 400 001. )
3. The Director General of Police, )  
Anti-Corruption Bureau, )  
Maharashtra State, Sir Pochkhanwala )  
Road, Worli, Mumbai – 400 030. )...**Respondents**

**Smt. Punam Mahajan, Advocate for Applicant.**

**Smt. K.S. Gaikwad, Presenting Officer for Respondents.**

**CORAM : DEBASHISH CHAKRABARTY, MEMBER-A**

**DATE : 23.11.2023**

**JUDGMENT**

1. The Applicant who is serving as Deputy Superintendent of Police (One Step Promotion), ACB, Satara has invoked the provisions of Section 19 of the Administrative Tribunals Act 1985 to challenge the Transfer Order dated 25.09.2023 of Home Department by which she came to be transferred to the post of Assistant Commissioner of Police, State Intelligence Department, Maharashtra State, Mumbai.

2. The Applicant was represented by Smt. Punam Mahajan, learned Advocate for the Applicant while the Respondents were represented by Smt. K.S. Gaikwad, learned Presenting Officer.

3. The OA No.1240 of 2023 was taken up for Final Hearing on 18.10.2023 as the learned Advocate for the Applicant and learned Presenting Officer had already been heard at length regarding vacation of the 'Interim Order' of 09.10.2023.

4. The Applicant was promoted as Police Inspector on 19.06.2019 when she came to be transferred on 30.09.2021 from Special Branch, CID, Mumbai to the establishment of DG, ACB, Maharashtra State, Mumbai and thereupon she was posted in the Mumbai Unit ACB as Assistant Commissioner of Police (One Step Promotion). She was subsequently transferred intra organization on 03.01.2023 from Mumbai Unit ACB to the post of Deputy Superintendent of Police (One Step Promotion), ACB, Satara.

5. The Applicant while working as Deputy Superintendent of Police (One Step Promotion), ACB, Satara had submitted confidential representations to the Hon'ble Deputy Chief Minister of Maharashtra & Home Minister and the DG, ACB, Maharashtra State, Mumbai on 26.05.2023 alleging harassment by Shri R.V. Waghmare, Assistant

Commissioner of Police (One Step Promotion) working in Mumbai Unit ACB.

6. The Applicant contends that she is entitled to Normal Tenure of 3 years as per the provisions of Section 22N(1)(e) of the Maharashtra Police Act, 1951 and has been transferred within just few months of serving as Deputy Superintendent of Police, (One Step Promotion) ACB, Satara. She challenges the procedure followed by the DG, ACB, Maharashtra State, Mumbai for enquiring into the confidential representation submitted by her on 26.05.2023. The Applicant contends that the DG, ACB, Maharashtra State, Mumbai has not observed the detailed procedure to conduct 'Preliminary Enquiry' as per DGP Circular dated 07.10.2016 and she was not given any opportunity to substantiate her allegations of harassment against Shri R.V Waghmare, Assistant Commissioner of Police (One Step Promotion) working in Mumbai Unit ACB and thus was deprived of Natural Justice.

7. The Applicant further contended that the provisions of Section 22J(3) and Section 22J(4) of the Maharashtra Police Act, 1951 does not empower PEB of ACB which is Specialized Agency to recommend her Mid-Term and Mid-Tenure Transfer from the post of Deputy Superintendent of Police (One Step Promotion) ACB, Satara.

8. The Affidavit-in-Reply filed on behalf of (i) Respondent No.1 on 06.10.2023, (ii) Respondent No.2 on 06.10.2023 and (iii) Respondent No.3 on 13.10.2023 have enclosed the Minutes of Meeting of PEB of ACB held on 17.07.2023 and of PEB-1 of Home Department held on 18.09.2023. Further, the Affidavit-in-Reply of Respondent No.1 filed on 06.10.2023 affirms that the recommendations made by PEB of ACB in its meeting held on 17.07.2023 along with report of DGP, Maharashtra State were duly considered and thereupon recommendation of PEB-1 of Home Department made on 18.09.2023 was approved as per the provisions of Section 22N(1)(a) and Section 22N(2)(b) of the Maharashtra Police Act,

1951 by Hon'ble Deputy Chief Minister of Maharashtra also Home Minister and Competent Authority. Therefore, Respondent Nos. 1 to 3 by way their Affidavits-in-Reply have strongly justified the transfer of the Applicant on 25.09.2023 from the post of Deputy Superintendent of Police (One Step Promotion) ACB, Satara to Assistant Commissioner of Police, State Intelligence Department, Maharashtra State, Mumbai.

9. The Minutes of Meeting of PEB of ACB dated 17.07.2023 records the reasons for not accepting the contentions made by the Applicant in her confidential representations dated 26.05.2023. The PEB of ACB in its meeting held on 17.07.2023 has accepted the report of 'Preliminary Enquiry' submitted by SP, ACB, Pune on 13.07.2023. The Minutes of Meeting of PEB of ACB dated 17.07.2023 records that there were several instances of Applicant's behavior which were unbecoming of senior level Police Officer. The Minutes of Meeting of PEB of ACB dated 17.07.2023 also records its conclusion that allegations of harassment made against Shri R.V. Waghmare, Assistant Commissioner of Police (One Step Promotion) working in the ACB Mumbai Unit in confidential representations submitted by the Applicant on 26.05.2023 were found to be baseless after the 'Preliminary Enquiry' done by SP, ACB, Pune. Further, the Minutes of Meeting of the PEB of ACB dated 17.07.2023 notably records that even when the Applicant was working as Assistant Commissioner of Police (One Step Promotion) in the Mumbai Unit ACB, the then Additional DG, ACB, Mumbai holding additional charge of DG, ACB, Maharashtra State, Mumbai had on 27.09.2022 recommended to the DGP, Maharashtra State that the Applicant be transferred out of the establishment of DG, ACB, Maharashtra State, Mumbai. However, the DGP, Maharashtra State rather belatedly by letter dated 13.06.2023 to DG, ACB, Maharashtra State, Mumbai took cognizance of the earlier proposal submitted on 27.09.2022 and directed that detailed proposal about the Applicant be submitted after conducting 'Preliminary Enquiry' as per procedure laid down by DGP, Maharashtra State Circulars of 07.10.2016 and 08.11.2017.

10. The Minutes of Meeting of PEB-1 of Home Department held on 18.09.2023 records various acts of commission and omission while the Applicant was serving initially as Assistant Commissioner (One Step Promotion), ACB in the Mumbai Unit ACB and later when she was serving on the post of Deputy Superintendent of Police (One Step Promotion), ACB, Satara. The Minutes of Meeting of PEB-1 of Home Department held on 18.09.2023 records elaborate reasons as to why it come to the conclusion to recommend the transfer of Applicant from the post of Deputy Superintendent of Police (One Step Promotion) ACB, Satara to Assistant Commissioner of Police, State Intelligent Department, Maharashtra State, Mumbai which was subsequently approved by the Hon'ble Deputy Chief Minister of Maharashtra and also Home Minister and Competent Authority as per the provisions of Section 22N(1)(a) and Section 22N(2)(b) of the 'Maharashtra Police Act, 1951'.

11. The Minutes of Meeting of PEB of ACB held on 17.07.2023 and Minutes of Meeting of the PEB-1 of Home Department held on 18.09.2023 indicate that there indeed were several instances where the Applicant was found to be conducting herself in the manner not expected of Police Officer holding the substantive rank of Police Inspector while she was working as Deputy Superintendent of Police (One Step Promotion), ACB, Satara but even earlier when she had served as Assistant Commissioner of Police (One Step Promotion) in the Mumbai Unit ACB. The PEB of ACB and PEB-1 of Home Department have therefore in discharge of their respective functions under Section 22J(4) and Section 22(D) of the Maharashtra Police Act 1951 have arrived at well considered decision to recommend Applicant's transfer out of the establishment of the DG, ACB, Maharashtra State, Mumbai. The Transfer Order dated 25.09.2023 issued by Home Department to move out Applicant from the post of Deputy Superintendent of Police (One Step Promotion) ACB, Satara to Assistant Commissioner of Police, State Intelligence Department, Maharashtra State, Mumbai is therefore not ultra-virus of the powers vested with PEB of ACB and PEB-1 of Home

Department under provisions of Maharashtra Police Act 1951. Further, it is evident from record that Transfer Order dated 25.09.2023 of Home Department was not issued punitively and with malice against the Applicant having made allegations in her confidential representations dated 26.05.2023 against Shri R.V. Waghmare, Assistant Commissioner of Police (One Step Promotion) posted in Mumbai Unit ACB and even named the then Additional DG, ACB, Mumbai.

12. The Minutes of Meeting of PEB of ACB held on 17.07.2023 and PEB-1 of Home Department held on 18.09.2023 although were diligently recorded but it was expected that there would also be mention of reasons why the report of the then Additional DG, ACB, Mumbai dated 27.09.2022 recommending transfer of Applicant was not acted upon promptly by the DGP, Maharashtra State. Further, it is also necessary to observe that although the recommendation submitted on 27.09.2022 to the DGP, Maharashtra State for transfer of the Applicant out of the establishment of DG, ACB, Maharashtra State, Mumbai was pending; yet the Applicant's request was considered sympathetically and on 03.01.2023, she came to be posted as Deputy Superintendent of Police (One Step Promotion), ACB, Satara.

13. The facts and circumstances of the case for reasons mentioned above are peculiar and makes it imperative to observe with some degree of lament that although the confidential representations of the Applicant dated 26.05.2023 were made to the Hon'ble Deputy Chief Minister of Maharashtra and Home Minister as well as to DG, ACB, Maharashtra State, Mumbai, the 'Preliminary Enquiry' came to be conducted by SP, ACB, Pune. The report submitted by SP, ACB, Mumbai was accepted at the level of DG, ACB, Maharashtra State, Mumbai and DGP, Maharashtra State as per Minutes of Meeting of PEB of ACB held on 17.07.2023 and PEB-1 of Home Department held on 18.09.2023. The allegations made by the Applicant in her confidential representations dated 26.05.2023 though were not substantiated with evidence in the

'Preliminary Enquiry' conducted by SP, ACB, Pune, they were *prima facie* of serious nature to merit 'Preliminary Enquiry' to be conducted as per DGP, Maharashtra State Circulars dated 07.10.2016 and 08.11.2017 at much higher level by an officer at least of the rank of Additional Commissioner, ACB who should have been specifically nominated by the DG, ACB, Maharashtra State, Mumbai.

14. The Transfer Order dated 25.01.2023 issued by Home Department however cannot be interfered with on grounds of having been issued out of malafides against the Applicant, because except for allegations of harassment in her confidential representations dated 26.05.2023, no material evidence was submitted by her during the 'Preliminary Enquiry' done by SP, ACB, Pune to suggest that Shri R.V. Waghmare, Assistant Commissioner of Police (One Step Promotion) serving in the Mumbai Unit ACB would eventually be considered for posting in her place as Deputy Superintendent of Police, ACB, Satara. Further, the genesis of the Transfer Order dated 25.09.2023 lies in the initial proposal submitted on 27.09.2022 by the then Additional D.G., ACB, Maharashtra State, Mumbai holding additional charge of DG, ACB, Maharashtra State, Mumbai to the DGP, Maharashtra State which had remained in dormant state but was promptly acted upon only after the Applicant submitted her confidential representations on 26.05.2023 to the Hon'ble Deputy Chief Minister of Maharashtra and Home Minister and the DG, ACB, Maharashtra State, Mumbai alleging harassment by Shri R.V. Waghmare, Assistant Commissioner of Police (One Step Promotion) working in the Mumbai Unit ACB. No nexus has been established between the act of the Applicant to submit confidential representations on 26.05.2023 and her Transfer Order dated 25.09.2023 issued subsequently by Home Department to transfer her out of the establishment of D.G., ACB, Maharashtra State, Mumbai. Thus, no malafides can be ascribed to the decision taken to transfer the Applicant to the post of Assistant Commissioner of Police; State Intelligence Department, Maharashtra State, Mumbai.

15. The Hon'ble Supreme Court of India in its Judgment in ***B Varadha Rao v State of Karnataka, 1986 (3) Serv LR 60 (SC) : (1986) 4 SCC 624 : AIR 1987 SC 287*** has observed that transfer is an ordinary incident of service and therefore does not result in any alteration of any condition of service to disadvantage of Government Servants. The Hon'ble Supreme Court of India has also observed that an employee cannot, as a matter of right, seek transfer to a place of his choice in ***K. Sivankutty Nair v. Managing Director, Syndicate Bank, 1984 (2) Serv LR 13 (Kant); Chief General Manager (Telecom) v. Rajendra Ch. Bhattacharjee, (1995) 2 SCC 532 : SC 813 : (1995) 2 Serv LR 1.***

16. The Hon'ble Supreme Court of India in ***B Varadha Rao v State of Karnataka, 1986 (3) Serv LR 60 (SC) : (1986) 4 SCC 624 : AIR 1987 SC 287*** has observed that continued posting at one station or in one department not conducive to good administration as such continued posting creates vested interest. Further in ***UOI v NP Thomas, AIR 1993 SC 1605 : (1993) Supp (1) SCC 704*** Hon'ble Supreme Court of India has observed that since posts in public employment are generally transferable post, it follows that an employee has no vested right to remain at the post of his posting. In ***UOI v SL Abbas, AIR 1993 SC 2444 : (1993) 4 SCC 357*** it has been observed by Hon'ble Supreme Court of India that who is to be transferred where, is a matter for the appropriate authority to decide.

17. The Applicant's contentions that the procedure as per DGP, Maharashtra State Circulars dated 07.10.2016 and 08.11.2017 were not followed by the SP, ACB, Pune while conducting the 'Preliminary Enquiry' and therefore she was not accorded an opportunity to establish her allegations and thus denied Natural Justice fades into insignificance in view of the Hon'ble Supreme Court of India's categorical observation in ***Union of India & Ors. Vs. Janardhan Debanath & Anr. (2004) 4 SCC 245*** which is as under :-



*“The allegations made against the respondents are of serious nature, and the conduct attribute is certainly unbecoming. Whether there was any misbehavior is a question which can be gone into in a departmental proceeding. For the purposes of effecting a transfer, the question of holding an enquiry to find out whether there was misbehaviour of conduct unbecoming of an employee is unnecessary and what is needed is the prima facie satisfaction of the authority concerned on the contemporary reports about the occurrence complained or and if the requirement, as submitted by learned counsel for the respondents, of holding an elaborate enquiry is to be insisted upon the very purpose of transferring an employee in public interest or exigencies of administrative to enforce decorum and ensure probity would get frustrated. The question whether the respondents could be transferred to a different division is a matter for the employer to consider depending upon the administrative necessities and the extent of solution for the problems faced by the administrative. It is not for this Court to direct one way or the other.”*

18. The legal canvas woven by these judgments of the Hon’ble Supreme Court of India must be the backdrop against which ‘Judicial Review’ is to be undertaken of cases relating to Transfer Orders of Government Servants. The Government Servants who hold transferable post have no vested right to remain posted at one place and Courts or Tribunals must not interfere with the Transfer Orders which are made in ‘Public Interest’ and for ‘Administrative Reasons’ unless such Transfer Orders are made in violation of any ‘Statutory Provisions’ or on the ground of ‘Malafides’. Needless to emphasize that decisions of the Courts or Tribunals have to be based on assessment of specific facts of the case in totality vis-à-vis legal principles applicable. Therefore, even small variances in the factual matrix can make substantial difference in the precedential value of judicial decisions. The case of the Applicant needs to be decided on the basis of the judicial precedence in these judgments of the Hon’ble Supreme Court of India as well as evidence submitted and oral arguments advanced during the course of hearing as required under Section 22 of the Administrative Tribunal Act 1985 and provisions of law under Maharashtra Police Act 1951.

19. The Transfer Order dated 25.09.2023 of Home Department by which the Applicant came to be transferred from the post of Deputy Superintendent of Police (One Step Promotion) ACB, Satara out of the

establishment of the DG, ACB, Maharashtra State, Mumbai to the post of Assistant Commissioner of Police, State Intelligence Department, Maharashtra State, Mumbai does not suffer from any vice of (i) Arbitrariness in exercise of Statutory Power (ii) Malafides in exercise of Statutory Powers (iii) Unlawful exercise of Statutory Powers. Therefore, it merits no interference and is upheld. Hence, the following order :-

**ORDER**

- (A) Original Application is Dismissed.
- (B) No order as to Costs.

Sd/-  
**(DEBASHISH CHAKRABARTY)**  
**Member-A**

Mumbai  
Date : 23.11.2023  
Dictation taken by :  
S.K. Wamanse.

D:\SANJAY WAMANSE\JUDGMENTS\2023\November, 2023\O.A.1240.23.w.11.2023.Transfer.doc

Uploaded on