

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.167 OF 2019**

**DISTRICT : THANE**

Shri Prashant Vasant Satere. )  
Age : 57 Yrs., Police Inspector, Traffic, )  
Ambarnath, District : Thane and residing at )  
Satyam Apartment Building, C/602, 3<sup>rd</sup> Floor, )  
Room No.4, Sector 5, C.B.D. Belapur, )  
Navi Mumbai – 400 614. )...**Applicant**

**Versus**

The Commissioner of Police. )  
Thane City, Thane. )...**Respondent**

**Mr. M.D. Lonkar, Advocate for Applicant.**

**Mr. A.J. Chougule, Presenting Officer for Respondent.**

**CORAM : A.P. KURHEKAR, MEMBER-J**

**DATE : 20.03.2019**

**JUDGMENT**

1. In the present Original Application, the challenge is to the transfer order dated 20<sup>th</sup> February, 2019 whereby the Applicant (Police Inspector) has been transferred from Traffic Branch, Thane to Ambarnath Police Station, Thane. The Applicant was posted in Traffic Branch, Thane on 13.11.2017 and has not

completed his normal tenure. However, by impugned transfer order dated 20.02.2019, in view of directions of Election Commission of India, he has been transferred from Traffic Branch, Thane to Ambernath Police Station, Thane. The Applicant has challenge the transfer order on the following grounds :

- (i) The Applicant has not completed two years tenure at Traffic Branch, and therefore, it is mid-term and mid-tenure transfer in breach of Section 22-N of Maharashtra Police Act.
- (ii) No case is made out for his mid-term and mid-tenure transfer as contemplated under Section 22-N(2) of Maharashtra Police Act.
- (iii) The impugned transfer order does not fall within the direction issued by Election Commission of India.

The Applicant, therefore, sought to contend that the impugned transfer order dated 20.02.2019 is unsustainable in law and deserves to be set aside.

2. The Respondent (Commissioner of Police, Thane) resisted the application by filing Affidavit-in-reply (Page Nos.18 to 25 of the P.B.) *inter-alia* denying that the impugned transfer order is bad in law or suffers from any illegality. There is no denying that the Applicant has not completed his normal tenure contemplated under Section 22-N of Maharashtra Police Act at Traffic Branch, Thane. However, the Respondent contends that in view of instructions issued by Election Commission of India, it was imperative to transfer Police Personnel for fair and peaceful Loksabha Election. Accordingly, the proposal was placed before the Police Establishment Board (PEB) established under Section 22-I of Maharashtra Police Act. The Applicant was found suitable to fill-in the vacancy of P.I, Ambernath Police Station fall vacant on account of transfer of the earlier incumbent, and therefore, from the point of administrative exigencies, the PEB has approved the proposal to transfer the Applicant at Ambernath Police Station, District Thane. The posting of the Applicant at Ambernath Police Station, Thane

on executive post was found essential in public interest and on account of administrative exigencies. However, despite the issuance of transfer order, the Applicant though relieved from Traffic Branch did not join at Ambernath Police Station and caused inconvenience to the administration. As such, the impugned order does not suffer from any illegality and the challenge to transfer order is devoid of any merit.

3. Shri M.D. Lonkar, learned Advocate for the Applicant invited Tribunal's attention to the letter issued by Director General of Police dated 16<sup>th</sup> February, 2019 wherein directions have been issued for transfer of Police Inspectors working on executive posts within the period from 01.06.2015 to 31.05.2017. As per this Circular, only those P.Is. working on executive posts in the said period were to be transferred and it is not necessary to transfer others. Adverting to his letter dated 16.02.2019, the learned Advocate for the Applicant therefore sought to emphasize that the Applicant being working on non-executive post i.e. in Traffic Branch, he was not required to be disturbed in view of specific instructions given by the D.G. He further sought to contend that the Applicant has been posted at Ambernath Police Station because of transfer of Shri Narendra M. Patil from Ambernath Police Station to Senior Police Inspector, Khadakpada Police Station without considering other P.Is who have completed normal tenure in the District. Thus, according to him, no reason is forthcoming as to why the Applicant has been chosen to fill-in the said vacancy, and therefore, the impugned transfer order is not sustainable. He further sought to contend that, no specific reasons are recorded by PEB for such mid-term and mid-tenure transfer of the Applicant, and therefore, the transfer order is not in consonance of Section 22-N(2) of Maharashtra Police Act. To drive home his point, he referred to certain decisions passed by this Tribunal in earlier proceedings which will be dealt with a little later.

4. Per contra, Shri A.J. Chougule, learned Presenting Officer reiterated the stand taken in the Affidavit-in-reply and sought to contend that in view of transfers effected in pursuance of instructions issued by Election Commission of India for administrative exigencies, the Applicant was posted at Ambernath Police Station to fill-in the vacancy due to transfer of earlier incumbent Shri Narendra Patil who was transferred to Khadakpada Police Station in the same transfer order. He has further pointed out that the impugned transfers were approved by PEB, and therefore, the challenge to the transfer order is devoid of merit.

5. Needless to mention that the Government servant holding a transferable post has no vested right to remain posted at one place and Courts or Tribunals should not interfere with the transfer orders which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any statutory rule or on the ground of malafides. It is also well settled that it is for the appropriate authority to decide who should be transferred at particular place and unless the transfer order is vitiated by malafides or is made in violation of any statutory provisions, the Court or Tribunal should not interfere with it.

6. In view of aforesaid settled legal position, now the question comes whether the impugned transfer order suffers from any illegality and liable to be set aside.

7. True, as per letter of D.G. dated 16.02.2019, the P.Is working on executive posts only within the period from 01.06.2015 to 31.05.2017 were to be transferred without disturbing other P.Is working on non-executive posts. Admittedly, the Applicant was working on non-executive post in Traffic Branch. However, the Applicant's transfer was proposed by PEB to fill-in the vacancy at Ambernath Police Station in view of transfer of earlier incumbent Shri Narendra Patil. The name of Shri Narendra Patil is at Serial No.20 of common transfer order dated 20.02.2019. These transfers were proposed in view of general

instructions of Election Commission of India and while transferring twenty Police Inspectors in pursuance to the directions of Election Commission of India, resultant vacancies were also considered and accordingly, in place of P.I. Narendra Patil in view of his transfer to Khadakpada Police Station, the Applicant has been posted.

8. There is no denying that the Applicant is due to retire in November, 2019. However, as per instructions of Election Commission of India, P.Is who were due to retire within next six months are only exempted from the purview of Commission's directions mentioned in Para No.3 of the letter dated 16.01.2019. It is rightly pointed out by the learned Advocate for the Applicant that the Applicant does not fall within the criteria laid down in Para No.3 of the letter dated 16.01.2019. However, as stated above, the Applicant was transferred to fill-in the consequent vacancy because of transfer of P.I. Narendra Patil from Ambernath Police Station in compliance of instructions of Election Commission of India. This being the position, it was an exigency of administration to fill-in the post of P.I, Ambernath Police Station and Applicant being quite senior Police Officer in the opinion of PEB, he was suitable for the said posting, and therefore, posting is accordingly made. If this is the state of affairs, it cannot be said that the impugned transfer suffers from any illegality.

9. The learned Advocate for the Applicant tried to make much capital of absence of recording elaborate and specific reasons for the transfer of the Applicant. In this behalf, the perusal of minutes of PEB reveals that, on the top of minutes, there is specific mention that these transfers are necessary in the light of instructions of Election Commission of India and the changes, therefore, were imperative on account of administrative exigency. Needless to mention that, in view of forthcoming general election, the Government cannot afford to keep the

post of P.I. of Police Station vacant, and therefore, the decision to fill-up such post necessarily falls within the import and spirit of administrative exigency.

10. As per Section 22-N(2) of Maharashtra Police Act, in exceptional cases, in public interest and on account of administrative exigencies, the competent authority is authorized to make mid-term and mid-tenure transfer of any Police Personnel. In the present case, the PEB is admittedly the competent authority, and therefore, the decision taken by it on the above background has to be termed in compliance of Section 22-N(2) of Maharashtra Police Act.

11. The learned Advocate for the Applicant sought to place reliance on the decisions of this Tribunal in ***O.A.178/2019 (Swapnil Pawar Vs. State of Maharashtra) decided on 07.03.2019***. It was a case of transfer under the provisions of 'Maharashtra Government Servants Regulation of Transfer and Prevention of Delay in Discharge of Official Duties Act, 2005' (hereinafter referred to as 'Transfer Act 2005') and not under Maharashtra Police Act. In that matter, the Applicant – Mr. Swapnil Pawar was transferred at Kaij, District Latur because of cancellation of transfer of Smt. Ashwini Davere, who declined to join the said post and was on leave. It is in that context, the interpretation of proviso 1 of Section 4 of 'Transfer Act 2005' was under consideration which empowers the Government to transfer Government servant at any time in the year on newly created posts or to the posts which become vacant due to retirement, promotion, resignation, reversion, reinstatement, consequential vacancy on account of transfer or on return from leave. The Tribunal ultimately held that to fill-in any vacancy of a post where employee declined to join would not *ipso facto* fall in the category of proviso 1 of Section 4 of 'Transfer Act 2005'. As such, the facts being quite distinguishable, this authority is of no help to the Applicant. Similar is the situation about the decision referred by the learned Advocate for the Applicant in ***O.A.343/2008 (Umeshchandra Dighe Vs. State of Maharashtra)***

**decided on 29.08.2008.** This is also a matter arising from transfer under the provisions of 'Transfer Act 2005' and interpretation of proviso 1 of Section 4(4) of 'Transfer Act 2005' arose. As such, this authority is also of little assistance in the present matter while dealing with the transfer of Police Personnel under the provisions of Maharashtra Police Act.

12. The submission advanced by the learned Advocate for the Applicant that the Respondent ought to have fill-in the post of Ambernath Police Station by transferring some other Police Personnel, who has completed normal tenure, and therefore, the transfer is illegal is difficult to accept. In the first place, there is no material on record to shown that some other Senior Police Inspectors were available having completed their normal tenure, and therefore, in absence of any such foundation, the submission advanced by the learned Advocate for the Applicant that the Applicant was chosen for transfer by pick and choose method has to be rejected. As stated above, it is for the appropriate authority to decide who should be transferred at a particular place and in the present case, the PEB has decided to post the Applicant at Ambernath Police Station considering his seniority on the eve of general elections. Therefore, such decision in absence of allegation of malice or arbitrariness can hardly be questioned.

13. At this juncture, it would be apposite to refer the Judgment of Hon'ble Supreme Court in **2001 AIR SC 3309 (National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan & Anr.)** in Para No.5 held as follows :

*"5. On a careful consideration of the submissions of the learned counsel on either side and the relevant rules to which our attention has been invited to, we are of the view that the High Court was not justified in interfering with the impugned orders of transfer. It is by now well-settled and often reiterated by the Court that no Government servant or employee of public undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary*

*too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the courts of the tribunals cannot interfere with such orders as a matter of routine as though they are the appellate authorities substituting their own decision for that of the management, as against such order passed in the interest of administrative exigencies of the service concerned."*

14. It would be also useful to refer the decision of Hon'ble Supreme Court in **2010 AIR (SCW) 321 (Airport Authority of India Vs. Rajeev R. Pande and Ors.)** wherein the Hon'ble Supreme Court held that, in the matter of transfer of Government employee, the scope of judicial review is limited and the High Court or Tribunal would not interfere with the order of transfer lightly. This is so because the Court do not substitute their own decision in the matter of transfer and such interference may cause prejudice to the administrative functioning.

15. Lastly, the submission advanced by the learned Advocate for the Applicant that, in view of the retirement of the Applicant due in November, 2019, the Respondent ought to have exercised discretion in his favour by not disturbing him is concerned, the discretion seems to have exercised by the Respondent in the interest of administrative exigency by posting him on executive post at Ambarnath Police Station, so as to utilize his services for the benefit of administration and for smooth and fair ensuing Lok Sabha Election. This being the position, paramount consideration is of administrative exigency and every Government is obliged to discharge his duties efficiently till retirement.

16. For the aforesaid discussion, I have no hesitation to sum-up that the challenge to the impugned transfer order holds no water, as there is no contravention of mandatory provisions of Maharashtra Police Act. Resultantly, O.A. deserves to be dismissed. Hence, the following order.



**ORDER**

The Original Application is dismissed with no order as to costs.

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

Mumbai

Date : 20.03.2019

Dictation taken by :

S.K. Wamanse.

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