

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.214 OF 2023**

**DISTRICT : PUNE**

**Sub.:- Transfer**

1. Shri Pravin B. Bhoite. )  
Age : 43 Yrs, Occu.: Police Constable )  
attached to Indapur Police Station, )  
Pune Rural. )  
R/at A/P. Gajanan Housing Society, )  
District : Indapur. )
2. Shri Pravin S. Shingade. )  
Age : 32 Yrs, Occu.: Police Constable )  
attached to Indapur Police Station, )  
Pune Rural. )  
R/at A/P. Kumbhoj, )  
Tal.: Karmala, District : Solapur. )
3. Shri Manoj P. Gaikwad. )  
Age : 36 Yrs, Occu.: Police Constable )  
attached to Indapur Police Station, )  
Pune Rural. )  
R/at A/P. Morgaon, Tal.: Baramati, )  
District : Pune. )
- )...Applicants**

**Versus**

- The Superintendent of Police. )  
Pune [Rural], Having Office at Chavan )  
Nagar, Pashan Road, Pune – 411 008. )
- )...Respondent**

**Shri A.V. Bandiwadekar, Advocate for Applicant.**

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

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

**DATE : 24.01.2024**

**JUDGMENT**

1. The Applicants who are working as Police Constables in the establishment of SP, Pune [Rural] have invoked provisions of 'Section 19' of 'The Administrative Tribunals Act, 1985' to challenge their Transfer Orders dated 04.02.2023 by which they have been posted from Indapur Police Station to District Police HQ.

2. The learned Advocate for the Applicants stated that letter dated 01.12.2022 was written to SP, Pune [Rural] by some disgruntled unknown persons who are jealous of Applicants and who may have even been instigated by colleagues of the Applicants. The names of the Applicant No.1 and his Wife; Applicant No. 2 and Applicant No. 3 are mentioned in this letter dated 01.12.2022 and unfounded allegations have been levelled against them; with the sole intention to seek punitive action against Applicants.

3. The learned Advocate of Applicants then stated that subsequent to the receipt of letter dated 01.12.2022, the SDPO, Baramati Sub-Division by Wireless Message dated 16.01.2023 had directed all Applicants to attend his office on 17.01.2023 in order to hold enquiry into this 'Anonymous Complaint' dated 01.12.2022 purportedly made by one Shri Sakharam R. Shinde.

4. The learned Advocate for the Applicants further stated that without ascertaining the whereabouts of Shri Sakharam R. Shinde whose letter dated 01.12.2022 should otherwise have been considered as 'Anonymous Complaint' and without securing his presence for the enquiry, the SDPO, Baramati Sub-Division proceeded to record the statements of Applicants on 17.01.2023. The Applicants have not only refuted the unfounded allegations made against them, but also challenged the authority of the SDPO, Baramati Sub-Division to conduct any enquiry into this 'Anonymous Complaint' dated 01.02.2022.

5. The learned Advocate for the Applicants then stated that from communication of Assistant Police Inspector, Indapur Police Station on 18.01.2023 to SDPO, Baramati Sub-Division, it can be established that there was no person by name Shri Sakharam R. Shinde who was resident of any area under Indapur Police Station.

6. The learned Advocate of the Applicants further stated that the SDPO, Baramati Sub-Division being the Supervisory Officer of all the Applicants should not have acted as the 'Enquiry Officer'. The learned Advocate of the Applicants thereupon stated that in spite of the factual situation, the Applicants to their shock and surprise received Transfer Order dated 04.02.2023 by which all of them were transferred from Indapur Police Station to District Police HQ.

7. The learned PO relied upon the Affidavit-in-Reply dated 06.04.2023 filed on behalf of SP, Pune [Rural]. He pointed out that Applicants were justifiably posted from Indapur Police Station to District Police HQ by Transfer Order dated 04.02.2023. The Applicants had not only been found to be guilty of dereliction in duty but also charged with involvement in many illegal activities which are unbecoming of Police Personnel. The Transfer Order dated 04.02.2022 has been passed in consonance with the findings in 'Enquiry Report' submitted by SDPO, Baramati Sub-Division and is without any vindictiveness or malafides against Applicants. Learned PO further stated that the 'Enquiry Report' of SDPO, Baramati Sub-Division was placed before 'PEB' for taking appropriate view about the serious misconduct of the Applicants. The 'PEB' found it to be fit case to recommend transfer Applicants from Indapur Police Station to District Police HQ on grounds of 'Public Interest' and 'Administrative Exigency'. The Transfer Order dated 04.02.2023 was issued by SP, Pune [Rural] on 04.02.2023 in exercise of 'Statutory Powers' conferred upon him as 'Competent Authority' under Section 22N(2) of 'Maharashtra Police Act, 1951'.

8. The learned PO thereupon specifically mentioned that it was important to note that the Applicants were hand-in-glove with local people involved in liquor trade, gambling activities; sand mafia operations and various nefarious activities which are unbecoming of Police Personnel. The letter dated 01.12.2022 was not an 'Anonymous Complaint' against the Applicants as it was made by one Shri Sakharam R. Shinde. The Complainant Shri Sakharam R. Shinde had courageously highlighted the deviant conduct of the Applicants which were being done under the garb of dutiful Police Personnel. The allegations of Applicants that some disgruntled persons at the instance of their jealous colleagues were behind the 'Anonymous Complaint' is nothing but concocted story and farfetched imagination of the Applicants. The learned PO reiterated that the letter dated 01.02.2022 written to SP, Pune [Rural] was never 'Anonymous Complaint' as Shri Sakharam R. Shinde was in fact a 'Social Worker' living in area under Indapur Police Station.

9. The learned PO then stated that the SDPO, Baramati Sub-Division had complied with the doctrine of 'Natural Justice'. The SDPO Baramati Sub-Division had never refused to furnish to the Applicants the copy of this 'Public Complaint' that had been made against them by letter of Shri Sakharam R. Shinde dated 01.12.2022 but even those 'Public Complaints' made against the Applicants by other 'Social Workers' from areas under Indapur Police Station.

10. The learned PO stated that though provisions of Section 22(N) of Maharashtra Police Act, 1951 provides for tenure of 5 Years for Police Personnel who are 'Police Constables', it was pertinent to note that under provisions of Section 22(N)1(e) and Section 22(N)(2) of Maharashtra Police Act, 1951; it has been categorically mentioned that if any Police Personnel are found guilty of dereliction of duty, then on grounds of 'Administrative Exigency' and in 'Public Interest', the 'Competent Authority' shall make 'Mid-Term' transfers of such Police Personnel. The learned PO stressed on the settled position of law stating that as per the

ratio laid down by the Hon'ble Supreme Court of India, in the matter of **(2004) 4 SCC 245 (Union of India & Ors. Vs. Shri Janardhan Debanath & Anr.) decided on 13.02.2004** transferring any Government Servant because unsuitability, undesirability or incompetency cannot be treated as being 'Stigmatic or Punitive' Transfers. The Transfer Order dated 04.02.2023 of SP, Pune [Rural] does not suffer from vices of 'Arbitrariness' and 'Malafides'. Hence, this OA No.214/2023 being devoid of any merits should be outrightly dismissed with order to impose 'Exemplary Costs'.

11. The learned Advocate for the Applicants and learned PO were heard at length about the Transfer Order dated 04.02.2023 of SP, Pune [Rural] by which Applicants were posted from Indapur Police Station to District Police HQ allegedly based on letter dated 01.12.2022 written by Shri Sakharam R. Shinde to SP, Pune [Rural].

12. The complainant Shri Sakharam R. Shinde admittedly could not be located by SDPO, Baramati Sub-Divisions although he had in letter dated 01.12.2022 mentioned of being personally aware of unlawful activities of the Applicants who were serving in Indapur Police Station. The contention of Applicants is that the letter dated 01.12.2022 has no contact details like Telephone Number or Residential Address, etc. of Shri Sakharam R. Shinde and therefore 'prima-facie' should not have been taken cognizance of as per guidelines of State Government in GAD GR No.शाकाप-२०१५/प्र.क.५/१८(र. व का.), dated 25<sup>th</sup> February, 2015.

13. The contentions of the Applicants have been strongly denied by Affidavit-in-Reply dated 06.04.2023 filed by SP, Pune [Rural] who had acted on the 'Enquiry Report' submitted by SDPO, Baramati Sub-Division. However, in order to rule out any possibility of the letter dated 01.12.2022 being an 'Anonymous Complaint'; it was expected of SDPO, Baramati Sub-Division to have made concerted efforts to ensure that Shri Sakharam R. Shinde was located and then directed to remain

present for the enquiry on 17.01.2023 to substantiate the allegations made against Applicants. The SDPO, Baramati Sub-Division could have checked the name of Shri Sakharam R. Shinde from 'Official Documents' such as 'Photo Electoral Roll' or 'Property Tax Register' or other 'Citizen Data Bases' of the State Government.

14. The 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as 'Transfer Act 2005') does not govern the transfers of Police Personnel, as there is specific provision under its Section 1(3) which mentions that 'Chapter II' shall not apply to the employees of Police Force constituted under Section 3 of Maharashtra Police Act 1951 including 'IPS Officers' of Maharashtra Cadre. The case of Applicants therefore has to be examined with reference to the provisions under Section 22N of the 'Maharashtra Police Act 1951'.

15. The judgment of ***Hon'ble High Court at Bombay in Writ Petition No.9984/2019 and other Writ Petitions : The State of Maharashtra & Anr. Vs. Anuradha S. Dhumal & Ors. dated 01.09.2021*** has interpreted the Statutory Provisions under 'Section 22N' of the 'Maharashtra Police Act 1951' and how it must be distinguished from 'Section 3' of the 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005'. The observations made in 'Para 12', 'Para 13' and 'Para 14' of the judgment are reproduced below :-

- (i) Para 12 : "Transfer in relation to service would generally mean a change of place of employment within an organization. Since it is an incident of public service, consent of the employee is not required. In most organizations, transfer is regulated by administrative instructions or policy guidelines. In the State of Maharashtra, so far as Government employees are concerned, transfers are guided and regulated by the provisions of the 'Transfer Act 2005'. Transfers of police personnel, however, are regulated by the amended provisions of the 'The Maharashtra Police Act of 1951', the amendments having been necessitated by

reason of the decision of the Supreme Court reported in **(2006) 8 SCC 1 (Prakash Singh & Ors. Vs. Union of India & Ors.)**. Since two kinds of transfer are defined in the 'The Maharashtra Police Act of 1951', we need to seek guidance from the statutory provisions for deciding the contentious issue raised in these writ petitions. It is also considered appropriate to remind ourselves at this juncture that the 'The Maharashtra Police Act of 1951' was enacted to amalgamate various Police Forces into one common Police Force and, *inter alia*, binds the police personnel employed across the State in their performance of functions and the State Government in the exercise of its powers. Section 3 of the 'The Maharashtra Police Act of 1951' ordains that there shall be one Police Force for the whole of the State of Maharashtra and such force shall include every police officer referred to in clause (6) of section 2. Although the original applicants are not covered by clause (6), they are indeed police personnel as defined in clause (11A) of section 2. Therefore, the provisions of the 'The Maharashtra Police Act of 1951' would apply to all police personnel appointed thereunder and attached either to various Police Commissionerate area or beyond forming part of the Police Force of the State."

- (ii) Para 13 : "As can be seen from the extract of section 22N supra, sub-section (1)(b) of the 'The Maharashtra Police Act of 1951' ordains that for the police constabulary, which includes constables, a normal tenure shall be five years at one place of posting (emphasis supplied). "General Transfer", in section 2(6A), emphasizes posting of police personnel in the Police Force from one post, office or Department to another post, office or Department after completion of normal tenure as mentioned in sub-section (1) of section 22N (emphasis supplied). Such provisions, as of necessity, need to be juxtaposed with the relevant provisions of the 'Transfer Act 2005', viz. sections (3)(1) and (4)(1), and read to gather the legislative intent. So read, what was intended by the legislature by the words "at one place of posting" would clearly be evident. Section 3(1) of the 'Transfer Act 2005' ordains that for all groups of State Government servants or employees, viz. Groups A, B, C and D, the normal tenure in a post (emphasis supplied) shall be three years, with section 2(g) defining "post" as "the job or seat of duty to which a Government servant is assigned or posted". While in the 'Transfer Act 2005' the legislature has used the words "in a post", i.e., the job assigned or the seat of duty, significantly, while incorporating amendments in the 'The Maharashtra Police Act of 1951', the expression used is "at one place of posting". Such expression, quite obviously, was used to carve out a distinction between police personnel serving under a Police Commissionerate, which necessarily would

exercise jurisdiction over a specified "place" as defined in Section 2(8), and those who are posted beyond a Police Commissionerate area but is part of the State Police Force. While, ordinarily, the place of employment of a police constable attached to a Police Commissionerate is not likely to change even with change of posting, a change of posting for a member of the State Police Force could entail a change of place of posting. The expression "place of posting", therefore, assumes importance in the present context. The legislature while amending the 'The Maharashtra Police Act of 1951' and incorporating amendment in section 22N therein in 'Transfer Act 2005' has designedly not ordained normal tenure of five years on one post bearing in mind police personnel attached to Police Commissionerate area. Therefore, the distinction between normal tenure of five years at one place of posting [as in section 22N(1)(b)] and the normal tenure in a post shall be three years as in section 3(1) of the 'Transfer Act 2005' has to be borne in mind, which leaves no manner of doubt that the original applicants do not have semblance of any right to claim that once posted at the Crime Branch, they cannot be moved or shifted until they complete the normal tenure of five years. "Post" has been defined in section 2(11B) of the 'The Maharashtra Police Act of 1951'. Such definition is not similar to the definition of "post" in the 'Transfer Act 2005'. Thus, posting of the original applicants at the Crime Branch is neither a job assigned nor a seat of duty so as to provide a protective umbrella from transfer prior to the normal tenure. Had the constables like the original petitioners been governed by an enactment having similar provisions such as the 'Transfer Act 2005', the legal position would have been different and they could claim protection from transfer. Notably, the jurisdiction of the Police Commissionerate, Pune, extends to the whole of the city of Pune, which would be the "place" of "posting" referred to in section 22N(1)(b) of the 'The Maharashtra Police Act of 1951'. Therefore, so long as a police constable is not shifted out of Pune, he cannot derive any assistance from section 22N(1)(b) to contend that if he is posted on a particular seat of duty or a job is assigned to him, he cannot be transferred. However, we may not be misunderstood to have laid down the law by our interpretative exercise of the relevant statutory provision that a member of the police constabulary could be made to discharge duties from different posts in the city of Pune by subjecting him to frequent transfers. If a constable is so subjected, any alleged arbitrary decision resulting in frequent transfers could be made the subject matter of challenge on available grounds of judicial review."

(iii) Para 14 : "Our interpretation of section 22N(1)(b) of the 1951 Act accords with the co-ordinate Bench decision of this Court



reported in 2019 (3) Mh.L.J. 851 [Ashok S/o Rangnath Barde Vs. State of Maharashtra & Ors.], decided by the Aurangabad Bench. It has been held there as follows: -

"16. \*\*\* The place of posting has, therefore, to mean that a particular town or city, whereat an incumbent is posted irrespective of the fact of he having served with very many branches of the same department at various places in the same town or city."

16. The judgment of **Hon'ble High Court at Bombay in Writ Petition No.9984/2019 and other Writ Petitions : The State of Maharashtra & Anr. Vs. Anuradha S. Dhumal & Ors. dated 01.09.2021** highlights that in case of 'Police Constables', the expression used is 'at one place of posting' under 'Section 22N(1)(b)' of the 'Maharashtra Police Act 1951'. Hon'ble High Court at Bombay has emphasized on the sharp distinction between (a) 'Normal Tenure' of 5 years 'at one place of posting' for 'Police Constables' under 'Section 22N(1)(b)' of the 'Maharashtra Police Act 1951' and (b) 'Normal Tenure' of 3 years 'in a post' for other 'Government Servants' under 'Section 3' of the 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005'. The judgment of Hon'ble High Court of Bombay clearly distinguishes between the definition of 'post' under 'Section 2(11B)' of the 'Maharashtra Police Act 1951' and the definition of 'post' under 'Section 2(g)' of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005'.

17. The following observations recorded in 'Para 13' and 'Para 14' of the judgment are extracted to bring into sharper focus, the nuanced distinction required to be made between exercise of 'Statutory Powers' under 'Section 22N(1)(b)' of the 'Maharashtra Police Act 1951' by 'Commissioner of Police, Pune' and its exercise by the 'SP, Pune [Rural]'.

(a) Para 13. "While in the 'Transfer Act 2005' the legislature has used the words "in a post", i.e., the job assigned or the seat of duty, significantly, while incorporating amendments in the 'The Maharashtra Police Act of 1951', the expression used is "at one place

of posting". Such expression, quite obviously, was used to carve out a distinction between police personnel serving under a Police Commissionerate, which necessarily would exercise jurisdiction over a specified "place" as defined in Section 2(8), and those who are posted beyond a Police Commissionerate area but is part of the State Police Force."

- (b) Para 13. "Notably, the jurisdiction of the Police Commissionerate, Pune, extends to the whole of the city of Pune, which would be the "place" of "posting" referred to in Section 22N(1)(b) of the 'The Maharashtra Police Act 1951'. Therefore, so long as a police constable is not shifted out of Pune, he cannot derive any assistance from Section 22N(1)(b) to contend that if he is posted on a particular seat of duty or a job is assigned to him, he cannot be transferred."
- (c) Para 14. "Our interpretation of Section 22N(1)(b) of the 1951 Act accords with the co-ordinate Bench decision of this Court reported in 2019 (3) Mh.L.J. 851 [Ashok S/o Rangnath Barde Vs. State of Maharashtra & Ors.], decided by the Aurangabad Bench. It has been held there as follows: -

"16. \*\*\* The place of posting has, therefore, to mean that a particular town or city, whereat an incumbent is posted irrespective of the fact of he having served with very many branches of the same department at various places in the same town or city."

18. The concurrent reading of judgments in **Writ Petition No.9984/2019 and other Writ Petitions [The State of Maharashtra & Anr. Vs. Anuradha S. Dhumal & Ors.] decided on 01.09.2021 and 2019 (3) Mh.L.J. 851 [Ashok S/o Rangnath Barde Vs. State of Maharashtra & Ors.] of Hon'ble High Court at Bombay** emphasizes that the term 'at one place of posting' under 'Section 22(N)(1)(b)' of the 'Maharashtra Police Act 1951' must mean such geographical area which under the relevant laws has been notified as 'Town or City'.

19. The jurisdiction of 'SP, Pune [Rural]' extends to 'Rural Areas' of Pune District except 'Urban Areas' under (a) Pune Municipal Corporation and (b) Pimpri-Chinchwad Municipal Corporation which are under jurisdiction of respective Police Commissioners. Therefore, going by the 'ratio decidendi' of these judgments of Hon'ble High Court at Bombay which interprets the term 'at one place of posting' under Section 22N(1)(b) of the 'Maharashtra Police Act 1951' to mean particular 'Town

or City'; cannot apply to 'SP, Pune [Rural]'. The 'Rural Areas' of Pune District are interspersed with different 'Towns' & 'Cities' notified under relevant laws which neither have physical proximity nor share common boundaries; so as to constitute single circumscribed geographical area under Section 22N(1)(b) of the 'Maharashtra Police Act 1951' which enables transfer of 'Police Constables' 'at one place of posting'. The 'District Police HQ' of 'SP, Pune [Rural]' is located within 'Pune Municipal Corporation' and is at distance of more than 100 Kms. from Indapur Police Station which is located in area under 'Indapur Municipal Council'. Hence, Transfer Order dated 04.02.2023 by which Applicants have been posted from 'Indapur Police Station' to 'District Police HQ' by 'SP, Pune [Rural]' as per recommendations of 'PEB' based on 'Enquiry Report' submitted by SDPO, Baramati Sub-Division will not constitute transfer 'at one post of posting' under provisions of 'Section 22N(1)(b)' of the 'Maharashtra Police Act 1951'.

20. The material fact of consideration in case of Applicants is whether the 'Enquiry Report' submitted by SDPO, Baramati Sub-Division which formed the basis of 'PEB' recommendation for transfer of Applicants from 'Indapur Police Station' to 'District Police HQ' meets the stringent expectation that every 'Public Authority' must always observe the principles of 'Natural Justice'.

21. The Transfer Order dated 04.02.2023 by which Applicants were posted from 'Indapur Police Station' to 'District Police HQ' by 'S.P, Pune [Rural]' thus becomes liable to be set aside not only on grounds of contravention of provisions under Section 22N(1)(b) of the Maharashtra Police Act 1951 which gives 'Normal Tenure' of 5 years to 'Police Constables' at one place of posting but also because it stands infirm having been issued based on the 'Enquiry Report' submitted by SDPO, Baramati Sub-Division who did not follow the principles of 'Natural Justice'.

22. The allegations made against all Applicants that they were involved hand-in-glove with people involved in liquor trade, gambling activities; local sand mafia and other nefarious activities are rather serious. Therefore; SP, Pune [Rural] is directed that complainant Shri Sakharam R. Shinde be located within 'One Week' and informed to remain present for 'Fresh Enquiry' to be conducted 'de-novo' against the Applicants within One Week thereafter; by any Senior Officer who is working in office of 'SP, Pune [Rural]' and by observing guidelines in DGP, Maharashtra State Circulars dated 07.10.2016 and 08.11.2017. However, if complainant Shri Sakharam R. Shinde is not traced out within 'One Week', then his letter dated 01.12.2022 must stand classified as per guidelines in GAD GR No.शाकाप-२०१५/प्र.क.५/१८(२. व का.), dated 25<sup>th</sup> February, 2015 and all Applicants should be posted back from 'District Police HQ of SP, Pune [Rural]' to 'Indapur Police Station'.

**ORDER**

- (i) Original Applicant is partly Allowed.
- (ii) No Order as to Costs.

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

Mumbai

Date : 24.01.2024

Dictation taken by :

S.K. Wamanse.

D:\SANJAY WAMANSE\JUDGMENTS\2024\January, 2024\O.A.214.23.w.9.2023.Transfer.doc

Uploaded on