

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.275 OF 2016

Shri Raosaheb S. Katkar.)
Aged : 45 Yrs, Working as Police Head)
Constable, Attached to Srinagar Police)
Station, Thane Police Commissionerate,)
R/o. A-Dawadi Gaon, Post : MIDC Area,)
Tal. : Kalyan, District : Thane.)...**Applicant**

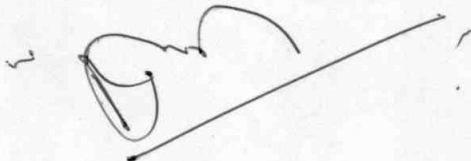
Versus

1. The Commissioner of Police.)
Thane Police Commissionerate,)
Having Office at Thane.)
2. The State of Maharashtra.)
Through the Principal Secretary,)
Home Department, Mantralaya,)
Mumbai - 400 032.)...**Respondents**

Shri A.V. Bandiwadekar, Advocate for Applicant.
Ms. N.G. Gohad, Presenting Officer for Respondents.

P.C. : R.B. MALIK (MEMBER-JUDICIAL)

DATE : 04.10.2016

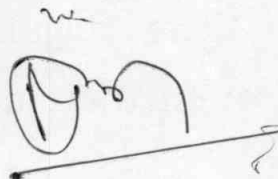


JUDGMENT

1. This Original Application (OA) impugns an order of transfer and is made by a Police Constable who has been transferred from Traffic Branch, Thane to the Police Station, Srinagar.
2. I have perused the record and proceedings and heard Shri A.V. Bandiwadekar, the learned Advocate for the Applicant and Ms. N.G. Gohad, the learned Presenting Officer for the Respondents.
3. Be it noted right at the outset that this OA is basically governed by the relevant provisions of Section 22-N of the Maharashtra Police Act, 1951 as amended from time to time, more particularly, in April, 2015. In dealing with the transfers of Police Inspectors, I had an occasion to discuss most of the points herein involved in **OA 466/2016 (Shri Arun R. Pawar Vs. State of Maharashtra and 2 others and one another OA, dated 12.7.2016)** (to be hereinafter called **Arun Pawar's** case). Although the present is an instance of a transfer of Head Constable but the legal provisions applicable being same, the principles discussed in **Arun Pawar** will be applicable to the present matter as well. It may also be noted that there was an



that he behaved in an arrogant manner with his superior Officer Shri Deshmukh. In the Affidavit-in-reply, there is a reference to these complaints, but in the same breath, it is reiterated a few times that the transfer was exclusively administrative and legal. Now, on 1.4.2015, the Police Commissioner (Traffic), Thane administered a minor penalty of censure (सक्त ताकिद) which is at Exh. 'R-1' (Page 47 of the PB). From the replies received under Right to Information Act also, there is some reference to the complaints summarized hereinabove. It is very clear that if a warning was given to him (censure), then it must have been for a period anterior for otherwise there was no occasion to keep those complaints pending and in fact, as I shall be presently pointing out, the issue of transfer has to be clearly distinguished from disciplinary matters. The service condition of transfer is fully codified and nobody has got a right to deviate from the express text of law as interpreted by the binding judicial pronouncements. Just because there are complaints, other factors remaining constant that by itself can be no ground to effect transfers. Although there are powers under other set of Rules pertaining to other aspects of service conditions including Disciplinary and Appeal Rules which could be invoked.



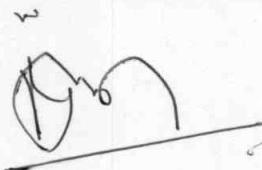
6. At this stage, it will be appropriate to briefly revert to **Arun Pawar** (supra). As already hinted that was a case of transfer of Police Inspectors and this Tribunal had an occasion to decide a number of matters relating to transfers. The significance of the enactment (Maharashtra Police Act) as amended by the 2015 amendment fell for consideration and I referred to an earlier interim order in Para 7 of **Arun Pawar** (supra). Therein from that earlier Judgment, Paras 5 and 6 were quoted. I may now for the facility reproduce Para 7 from **Arun Pawar's** case.

“7. In fact, this year, several transfers came to be made in the Police Establishment, more or less in the same set of facts. A number of Original Applications (OAs) are brought before this Tribunal for redressal. In some matters, interim reliefs have also been granted. Now, in making such interim orders, in a fasciculus of 10 OAs being OAs 447 and 7 others involving 10 Applicants on 31.5.2016, I granted interim relief and that too of mandatory nature at interlocutory stage and effectively ordered reposting of those Applicants to the posts that they were transferred from. The legal issues that arose for consideration therein are more or less the same



herein. The history preceding the amendments to the said Act was noted in Paras 5 & 6 of the said order by me. Let me reproduce those two Paragraphs (5 & 6).

“5. The issues herein involved including the one under consideration befall the ambit of the provisions of the Maharashtra Police Act, 1951 as amended from time to time including on 6th April, 2015. The rest of the provisions are also important, but the pivotal provision herefor is Section 22(N) of the said Act. It cannot be disputed that in a historical perspective, as a result of the judgment of the Hon’ble Supreme Court in **Prakash Singh and others Vs. Union of India and others (2006) 8 SCC Page 1 (Prakash Singh’s case)**, the State Government constituted what has come to be known as Police Establishment Board (to be hereinafter called Board). Be it noted at this stage itself that transfer is one aspect of the service condition of the Government employees and in this case Police Personnel which has engaged of late the attention of



the society, and therefore, of all the 3 wings of the State including the judiciary. It is not necessary at this stage to delve into the details thereof and it would suffice to mention that on account of various aberrations and other factors which were not quite honourable, the need was felt to streamline, regularize and make transparent the facet of transfer of the Government employee which in this case happen to be Police Personnel. Therefore, that aspect of the matter has now become statute regulated and that is relatable to the mandate of the Hon'ble Supreme Court in **Prakash Singh's** case. Therefore, it will have to be zealously guarded and made sure that the transfer aspect of the matter is not made light of and is made strictly adhering to the statutory principles and also to translate into reality the legislative intent which in turn as mentioned above, traces its origin to the mandate in **Prakash Singh's** case.

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6. Another aspect of the matter is that these disputes are brought before a forum which generally and by and large exercises jurisdiction of judicial review of administrative action with all the well known jurisdictional constraints. However, an approach which may lead to practical refusal to exercise jurisdiction at all even when there is a statutory mandate which traces its origin to the law laid down by the Hon'ble Supreme Court, then the judicial forum must guard thereagainst and must show awareness to the need of making sure that the statutory mandate was properly observed and if it is found even on a surface view that it was not, then there would be no other-go but "to act" in so far as the judicial forum is concerned."

7. Going further, as already discussed above, for the constabulary, there is a PEB. If the person competent to be the Chairman was not there and another Officer howsoever highly placed was there, I do not think, it was a lacuna that can be cured. From Para 12 of Arun Pawar (supra), it would appear that even the present would be an instance of specialized agency and in as much as the Applicant had not completed his five year term, it was an



instance of mid-tenure and mid-term transfer. In Para 14, the provisions of Section 22-N (i)(c) of the Maharashtra Police Act came to be discussed in the context of competent authority and other aspects of the matter. The said Paragraph needs to be reproduced.

“14. Section 22N(1)(c) defines the term, “competent authority for the general transfers”. In so far as the Inspectors which I am concerned with, it is PEB-2. The proviso thereof needs to be reproduced along with Section 22N(2).

“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

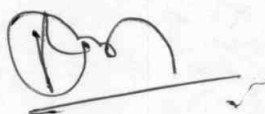


(e) the Police Personnel is guilty of dereliction of duty.

(2) In addition to the grounds mentioned in sub-section (1), in exceptional cases, in public interest and on account of administrative Police Personnel of the Police Force.”

8. In Para 16, it was noted relying upon the proviso after the explanation as inserted by the 2015 amendment that in case of serious complaint, irregularity, law and order problem, the highest competent authority could make the transfer of any Police Personnel without any recommendations of the concerned Police Establishment Board. It is quite clear that in such a set of circumstances, it will be the State Government that would be the competent authority to make mid-tenure transfer and perusal of Para 17 of **Arun Pawar** would show that such a power could be exercised by the Hon'ble Chief Minister.

9. In so far as the complaints are concerned, I have already discussed above that when we deal with a statute regulated service condition of transfer, we have to remain within its confines although the authorities may have powers in other branches of different service conditions. However, much as the Respondents would like to screen

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their case, by lavish references to the alleged act of indiscipline and complaint of Mr. Padwal, it would become clear that this is an instance of punitive transfer which the Hon'ble Supreme Court has frowned upon in **Somesh Tiwari Vs Union of India, 2009 (23) SLR 506 (SC)**. I discussed **Somesh Tiwari's** case in Para 19 of **Arun Pawar**. In Para 21 of **Arun Pawar** and a few Paragraphs thereafter, it was found that mere allegations howsoever serious, they might be, would not be sufficient unless they were duly enquired into, for which some other case law was discussed.

10. The upshot is that the impugned order made in the background hereinabove discussed, in so far as it relates to the transfer of the Applicant is unsustainable. It was mentioned at the Bar that the Applicant has taken over at Police Station, Srinagar under what the learned Advocate called under protest. Be it as it may, in my opinion, once it is clear that the service condition of transfer is statute regulated, then all actions of the authorities in that behalf must conform to the statute and the judicial forum shall zealously guard against any violation of law. The law will have to be enforced and in order to do it, if need be, the orders of mandatory nature will also have to be passed regardless of whether the stage



is interlocutory or final, but at final stage, there can be no doubt that an appropriate order can always be made. I am, therefore, so disposed as to uphold this OA and direct the reposting of the Applicant to the Traffic Branch, Thane which had been transferred from.

11. The order herein impugned in so far as it relates to the Applicant stands hereby quashed and set aside. The Applicant is directed to be reposted to the post he had been transferred from by the impugned order within two weeks from today. The Original Application is allowed in these terms with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
04.10.2016

04.10.16

Mumbai
Date : 04.10.2016
Dictation taken by :
S.K. Wamanse.