

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.39 OF 2019

DISTRICT : MUMBAI

Shri Kiran Vishnu Patil.)
Age : 56 Yrs., working as Assistant)
Commissioner of Police, Economic)
Offence Wing, Mumbai Police)
Commissionerate, having Office in the)
campus of Commissioner of Police,)
Mumbai, L.T. Marg, Opp. Crawford)
Market, Fort, Mumbai - 400 001.)...**Applicant**

Versus

The State of Maharashtra.)
Through the Principal Secretary,)
Home Department, Mantralaya,)
Mumbai - 400 032.)...**Respondent**

Mr. A.V. Bandiwadekar, Advocate for Applicant.

Ms. S.P. Manchekar, Chief Presenting Officer for Respondent.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 23.09.2019

JUDGMENT

1. The Applicant has challenged the impugned transfer order dated 20.06.2018 as well as another order dated 25.02.2019 which

has been passed during the pendency of present O.A. invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to this application are as under:-

The Applicant is Assistant Commissioner of Police (ACP) and has challenged the impugned transfer orders dated 20.06.2018 as well as another order dated 25.02.2019 passed during the pendency of this O.A. contending that both the orders being mid-term transfer are unsustainable in law and the same has been passed in colourable exercise of powers without compliance of mandatory provisions of Maharashtra Police Act, 1951 (hereinafter referred to as 'Act of 1951' for brevity). The challenge to the impugned orders is arising on the following background.

(a) While the Applicant was working as Assistant Commissioner of Police, Special Branch, Navi Mumbai, he was transferred as ACP, Control Room, Navi Mumbai by order dated 25.01.2018.

(b) Applicant has challenged the order dated 25.01.2018 by filing O.A.No.136/2018 but during the pendency of that O.A, he was transferred as ACP in the office of Commissioner of Police, Brihanmumbai by order dated 20.06.2018. In view of this subsequent order, the Applicant had filed M.A. in O.A.No.136/2018 to challenge the order dated 20.06.2018 but M.A. was rejected by the Tribunal on the ground that it is fresh cause of action for which the Applicant may avail legal remedy independently. Consequently, O.A.No.136/2018 was dismissed by the Tribunal by order dated 06.11.2018 on the ground that it had become infructuous in view of subsequent transfer order dated 20.06.2018.

(c) The Applicant, therefore, filed the present O.A. challenging the order dated 20.06.2018 on the various grounds, particularly on the ground that the composition of Police Establishment Board (PEB) which has recommended his transfer is not legal in the teeth of Section 22(C) of 'Act of 1951' as well as in view of decision rendered by this Tribunal in **O.A.518/2018 (Vikas Totawar Vs. State of Maharashtra) decided by Hon'ble Chairman on 19.10.2018** amongst others.

(d) During the pendency of present O.A, this Tribunal has passed order on 07.02.2019 indicating that the Respondent can take remedial measures if found necessary by placing his matter before the duly constituted PEB in view of attack of the Applicant on the composition of PEB.

(e) On the above background, the Respondent had placed the matter again before newly constituted PEB which approved the transfer and issued fresh order dated 25.02.2019 by cancelling earlier order dated 20.06.2018 and again posted the Applicant at the same place as ACP in the office of Commissioner of Police, Brihanmumbai.

3. In view of aforesaid circumstances, the Applicant sought to assail both the transfer orders dated 20.06.2018 as well as 25.02.2019 in the present O.A.

4. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondent at a length.

5. In view of submission advanced by the learned Advocate for the Applicant, the challenge to the transfer orders is on following grounds:-

(a) Composition of PEB which approved the transfer is not in accordance with Section 22C of Maharashtra Police Act, 1951 due to absence of Member from Backward Class which render the transfer order illegal.

(b) Applicant had not completed normal tenure of two years, and therefore, it being mid-tenure transfer is unsustainable in law in absence of making a case as an exceptional case or in public interest and on account of administrative exigencies, as contemplated under Section 22N(2) of 'Act of 1951'.

6. **As to ground No.(a) :-**

As stated earlier, this is second round of litigation. Earlier, the Applicant was transferred by order dated 25.01.2018 which was subject matter of challenge in O.A.No.136/2018 but during the pendency of that O.A, he was transferred as ACP in the office of Commissioner of Police, Brihanmumbai and in view of the subsequent development, O.A.136/2018 was dismissed being infructuous. In so far as the transfer order dated 20.06.2018 is concerned, that was approved by PEB on 06.06.2018 wherein there was no Members from Backward Class. Material to note that the PEB had transferred several Police Personnel in pursuance of his minutes of the meeting dated 06.06.2018 and Shri Vikas S. Totawar, Sub-Divisional Police Officer who was amongst them. Shri Vikas Totawar had challenged his transfer order by filing O.A.518/2018 wherein the Tribunal by Judgment dated 19.10.2018 quashed the transfer order on the ground of absence of Member of Backward Class. The Tribunal has categorically held that as per proviso to Section 22C, it is mandatory

requirement that there should be a Member of Backward Class amongst the Members of PEB.

7. Here, it would be material to reproduce Section 22C of Maharashtra Police Act, which is as follows :-

“22C. Police Establishment Board No. 1

(1) The State Government shall, by notification in the *Official Gazette*, constitute for the purposes of this Act, a Board to be called the Police Establishment Board No.1.

(2) The Police Establishment Board No. 1 shall consist of the following member, namely:-

- | | | | |
|-----|---|-----|-------------------|
| (a) | Additional Chief Secretary (Home) | ... | Chairperson |
| (b) | Director General and Inspector General of Police | ... | Vice-Chairperson |
| (c) | Director General, Anti-Corruption Bureau | ... | Member; |
| (d) | Commissioner of Police | ... | Member; |
| (e) | Additional Director General and Inspector General of Police (Establishment) | ... | Member-Secretary: |

Provided that, if none of the aforesaid members is from the Backward class, then the State Government shall appoint an additional member of the rank of the Additional Director General and Inspector General of Police belonging to such Class.

Explanation. – For the purposes of this sub-section, the expression “Backward Class” means the Scheduled Caste, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Special Backward Category and Other Backward Classes.”

8. Now, turning to the present case, during the pendency of O.A, in view of decision rendered by this Tribunal in O.A.518/2018 (Totawar’s case), the Respondent had constituted new PEB and again placed the matter before newly constituted PEB on 16.02.2019. The minutes of the meeting dated 16.02.2019 are at Page No.53D of P.B.

As per the decision of PEB, it resolved to cancel first transfer order dated 20.06.2018, but again posted the Applicant at the same place i.e. Assistant Commissioner of Police in the office of Commissioner of Police, Brinhanmumbai. Accordingly, in terms of minutes of PEB, the approval of Hon'ble Chief Minister was accorded to the same.

9. Shri Bandiwadekar, learned Advocate for the Applicant sought to assail the decision of PEB dated 16.02.2019 contending that the said PEB too is not in consonance with Section 22C of 'Act of 1951' as Member Secretary was belonging to Backward Class and no other from other Members belong to Backward Class. According to him, one of the Member should be Backward Class and empanelment of Member Secretary from Backward Class is not enough. He has also pointed out that one of the Member of PEB viz. Shri Paramvir Singh (Director General of Police) was absent in the meeting and on this count also, the decision of PEB is illegal.

10. Per contra, the learned CPO submits that Shri Kulwant Sarangal, Additional Commissioner of Police (Establishment) who was Member Secretary of PEB belongs to Backward Class, and therefore, it cannot be said that there was no Member from Backward Class in PEB. As regard absence of Shri Paramvir Singh, who was one of the Member of PEB, she submits that he was out of station, and therefore, he could not be consulted. In this respect, she submits that the decision being taken by the remaining four Members, it being by majority cannot be faulted with.

11. The perusal of minutes of PEB dated 16.02.2019 reveals that following were the Members of PEB.

- (i) Shri Sanjay Kumar (Additional Chief Secretary, Mumbai)
Chairman, PEB.

- (ii) Shri Paramvir Singh (Director General of Police, M.S.), Member.
- (iii) Shri S.K. Jaiswal, Police Commissioner, Brihanmumai, Member.
- (iv) Shri Sanjay Barve, Director General, Anti-Corruption Bureau, M.S., Member.
- (v) Shri Kulwant Singh, Additional Commissioner of Police (Establishment) Member Secretary.

12. Except Shri Paramvir Singh, remaining Members approved the decision and put their signatures on the minutes. Material to note that, as per Notification dated 04.12.2015 issued by Government, the above Officials are the Members of PEB. By Notification dated 04.12.2015 (Page No.53-E of P.B.), Additional Director General and Inspector General of Police (Establishment) is notified as Member Secretary [ex-officio]. There is no denying that Shri Kulwant Singh belongs to Backward Class. The submission advanced by the learned Advocate for the Applicant that the Member Secretary has no role in the decision making except to convene the meeting, and therefore, the Members has to be from Backward Class holds no water. Shri Kulwant Singh, Additional Commissioner of Police (Establishment) is the signatory to the decision recorded in meeting dated 16.02.2019. As such, he is not the only Secretary, but the Member Secretary and by nomenclature itself, he is one of the Member of PEB. This being the position, in my considered opinion, the submission advanced by the learned Advocate for the Applicant that there is no proper representation of a Member from Backward Class and on that count, the decision of PEB is illegal holds no water.

13. Reliance placed by the learned Advocate for the Applicant on **1988 (supp.) SCC 562 (State of Andhra Pradesh & Anr. Vs. Dr. Mohanjit Singh and Anr.)** is of no help to the Applicant in the present situation. In that case, the Hon'ble Supreme Court laid down

the ratio that where the presence of a particular Member of a Committee is regarded as essential for completing the forum, in that event, the absence of that Member in Selection Committee would render the decision invalid notwithstanding ex-post facto ratification by that Member. As such, the said matter was pertaining to selection. Whereas, in the present case, out of five Members, only one Member (Shri Paramvir Singh) was absent. The decision of PEB was also approved by the Chairman of Committee, and therefore, absence of one Member does not render the decision invalid. There is no requirement of Coram and if the decision taken by majority, then it cannot be faulted with in absence of any express provision to the contrary. Suffice to say, the absence of one Member of PEB itself does not render the decision of PEB invalid. As such, I do not find any illegality in the composition of PEB.

14. However, pertinent to note that, though the Respondent admits that the first transfer order dated 20.06.2018 was unsustainable in view of defective composition of the then PEB (absence of Member from Backward Class) instead of withdrawing the transfer order dated 20.06.2018 and reinstating the Applicant in service, the Respondent sought to rectify the illegality by confirming the same decision by newly constituted PEB with one of the Member Secretary from Backward Class. This is highly criticized by the learned Advocate for the Applicant contending that once the Respondent admits that the first transfer order dated 20.06.2018 was unsustainable in law, then firstly, he ought to have been reinstated in service, and thereafter, only the Respondent would have proceeded to pass another order afresh in accordance to law. I find merits in his submission in this behalf.

15. The Respondent sought to rectify the illegality crept in first transfer order dated 20.06.2018 by affirming the same decision by another PEB (newly constituted PEB) and meaning thereby the effect

is given with retrospective operation i.e. from 20.06.2018. True, as per the decision of newly constituted PEB, fresh transfer order has been issued on 25.02.2019. However, this is done without cancelling and getting the Applicant joined on the earlier post. What Respondent states in the second order dated 25.02.2019 that the order dated 20.06.2018 is cancelled and again Shri Kiran Patil is posted on the post of ACP, Office of Commissioner of Police, Brihanmumbai. In my considered opinion, such course is hardly permissible in law, as by this order, in reality, the effect is given with retrospective effect from first order dated 20.06.2018. Once the order dated 20.06.2018 found illegal, then it necessarily follows that it ought to have been cancelled and by restoring the applicant to his earlier post and thereafter only, the Respondent would have proceeded further, if desired. However, instead of doing so, the Respondent simply cancelled the order dated 20.06.2018 but in effect and in reality, it has consequences of effecting transfer from 20.06.2018 itself. In my considered opinion, such course of action is not permissible in law. In other words, in an attempt to rectify illegality occurred in first order, the Respondent again landed in committing illegality by giving effect to the order dated 25.02.2019 with retrospective effect i.e. from 20.06.2018.

16. In law, once the order is found illegal and issuing authority admits the position, then after cancellation of the same, the concerned employee is entitled for institution that is for restitution of the earlier position, so that he should not suffer from any such illegal order and that is why, he is required to be restored to earlier position and thereafter only, the Department could proceed ahead for passing fresh order in accordance to law. Such method adopted by the Respondent has effect of maintaining transfer of Applicant w.e.f.20.06.2018 which itself was based on illegal decision of the then PEB. Once the decision is held illegal, then it must go as *non-est* and it cannot be rectified in such manner which deprives the party from

restoring to its original state. Otherwise, it amounts to give effect with retrospective effect which I am afraid cannot be done.

17. **As to ground No.(b) :-**

Shri Bandiwadekar, learned Advocate for the Applicant vehemently urged that the Applicant has not completed two years' tenure at his last posting, and therefore, the first transfer order dated 20.06.2018 without making out case of mid-term transfer as contemplated under Section 22N(2) of 'Act of 1951' is unsustainable. He has further pointed out that the transfer orders were issued treating it as a 'General Transfer Orders' without having any reference to Section 22N(2) of 'Act of 1951'. He has further pointed out that the impugned transfer order being issued on 20.06.2018 is mid-term transfer as defined in Section 2(6B) of 'Act of 1951'. He, therefore, contends that, on this ground also, the impugned transfer order is liable to be set aside.

18. Per contra, Ms. S.P. Manchekar, learned Chief Presenting Officer sought to contend that, though the Applicant had not completed two years' tenure at his last posting in Turbhe Division, his entire tenure in Navi Mumai was more than two years, and therefore, it cannot be said that he has not completed two years on the date of transfer. She admits that there is no reference or occasion to consider the matter from the angle contemplated in Section 22N(2) of 'Act of 1951'.

19. At this juncture, it would be material to reproduce certain provisions of Maharashtra Police Act to see whether the Applicant's transfer can be termed 'mid-term transfer'.

'General Transfer' is defined in Section 2(6A) as follows :-

“**2(6A)** General Transfer” means posting of a Police Personnel in the Police Force from one post, office or Department to another post, office or Department in the month of April and May of every year, [after completion of normal tenure as mentioned in sub-section (1) of section 22N].”

‘Mid-term Transfer’ is defined in Section 2(6B) as follows :-

“**2(6B)** “Mid-term Transfer” means transfer of a Police Personnel in the Police Force other than the General Transfer.]”

Section 22N(2) of Maharashtra Police Act provides for normal tenure of Police Personnel and Competent Authority which is as follows :-

“**22N.** 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) for Police Personnel of and above the rank of Deputy Superintendent of Police or Assistant Commissioner of Police a normal tenure shall be of two years at one place of posting;
- (b) for Police Constabulary a normal tenure shall be of five years at one place of posting;
- (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) for Police Officers of the rank of Police Sub-Inspector, Assistant Police Inspector and Police Inspector a normal tenure shall be of six years at Commissionerate other than Mumbai, and eight years at Mumbai Commissionerate;
- (e) for Police Officers of the rank of Police Sub-Inspector, Assistant Police Inspector and Police Inspector in Specialized Agencies a normal tenure shall be of three years.]

The Competent Authority for the general transfer shall be as follows, namely:-

	Police Personnel		Competent Authority
(a)	Officers of the Indian Police Service.	....	Chief Minister
(b)	Maharashtra Police Service Officers of and above the rank of Deputy Superintendent of Police.	....	Home Minister

- | | | | | |
|-----|---------------------------------|------|------|---|
| (c) | Officers up to Police Inspector | .... | (a) | Police Establishment Board No.2. |
| | | | (b) | Police Establishment Board at Range Level |
| | | | (c) | Police Establishment Board at Commissionerate Level. |
| | | | [(d) | Police Establishment Board at District Level |
| | | | (e) | Police Establishment Board at the Level of Specialized Agency]: |

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 :-

Police Personnel Authority	Competent
(a) Officers of the Indian Police Service.	.... Chief Minister;
(b) Maharashtra Police Service Officers of and above the rank of Deputy Superintendent of Police	.... Home Minister;
(c) Police Personnel up to the rank of Police Inspector for transfer out of the respective Range or Commissionerate or	

	Specialized Agency	....	Police Establishment Board No.2;
(d)	Police Personnel up to the rank of Police Inspector for transfer within the respective Range, Commissionerate or Specialized Agency	....	Police Establishment Boards at the Level of Range, Commissionerate or Specialized Agency, as the case may be;
(e)	Police Personnel up to the rank of Police Inspector for transfer within the District.	....	Police Establishment Board at District Level.

Provided that, in case of any serious complaint, irregularity, law and order problem the highest Competent Authority can make the transfer of any Police Personnel without any recommendation of the concerned Police Establishment Board.]”

20. The Applicant is in the cadre of Assistant Commissioner of Police. This being the position, he falls in Section 22N(a) which provides that the Assistant Commissioner of Police shall have normal tenure of two years at one place of posting. It is relevant to note that the period of two years is at one place of posting. Whereas, as per Section 22N(d) for Police Officers of the rank of Police Sub-Inspector, Assistant Police Inspector and Police Inspector, the normal tenure shall be six years at Commissionerates other than Mumbai and eight years at Mumbai Commissionerate. As such, for Police Officers falling in Clause (d), their normal tenure has treated as six years as a whole at Commissionerate other than Mumbai and eight years at Mumbai Commissionerate. Thus, there is distinction in the tenure of these Police Personnel falling in Clause (d) as compared to the tenure of Police Personnel falling in Section 22N(a) of the ‘Act of 1951’. The Applicant being Assistant Commissioner of Police falls in Section 22N(a) and have normal tenure of two years at one place of posting. In other words, the tenure of Assistant Commissioner of Police has to be treated two years at one place of posting and not his entire tenure in particular Commissionerate as a whole.

21. Admittedly, the Applicant has not completed two years' tenure at his last posting at Turbhe Division on the date of his transfer on 20.06.2018, and therefore, it comes within the definition of 'mid-term transfer'.

22. Apart, as per Section 2(6A) of 'Act of 1951', the general transfers are required to be issued in the month of April and May only. Whereas, as per Section 2(6B) of 'Act of 1951', mid-term transfer means transfer of Police Personnel in the Police Force other than general transfer. Whereas, in the present case, the transfer orders were issued on 20.06.2018 and not in the month of April and May. This being the position, it is quite clear that, it cannot be termed as 'general transfer order' which requires special reasons or administrative exigencies, as contemplated in Section 22N(2) of 'Act of 1951'.

23. The perusal of PEB minutes obviously proceeded on the assumption that it is general transfer. There is absolutely no reference of any special case or public interest or administrative exigency, as contemplated in Section 22N(2) of 'Act of 1951'.

24. The learned CPO made feeble attempt to justify the transfer order contending that, as the process of transfer could not be completed in the month of April and May, it was spilled over to June, and therefore, the approval of Competent Authority viz. Hon'ble Chief Minister was obtained. Needless to mention that the approval of Hon'ble Chief Minister can hardly legalize such mid-term transfer in absence of making out any special case or administrative exigency as contemplated in Section 22N(2) of 'Act of 1951'. Needless to mention when law requires that the transfer has to be effected only in April and May then necessary, shall be in consonance with Section 22N(2), then in absence of its observance and adherence, the approval by Hon'ble Chief Minister cannot legalize the transfer order.

25. As such, even assuming for a moment that the Applicant's tenure in Navi Mumbai as a whole is considered (since 2015) and had completed two years on the date of transfer, in that event also, the impugned transfer order being mid-term transfer in the eye of law, it is bound to fail in absence of compliance of Section 22N(2) of 'Act of 1951'. Admittedly, there is no such compliance. Indeed, the learned CPO fairly concedes that the Department processed the matter as a 'general transfer' considering that the Applicant has completed more than two years. Suffice to say, the Respondent lost sight of the fact that, in law, it being mid-term transfer, it must be in consonance to Section 22N(2) of 'Act of 1951' which is admittedly missing.

26. The totality of aforesaid discussion leads me to sum-up that both the transfer orders dated 20.06.2018 and 25.02.2019 are not sustainable in law and liable to be quashed. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned transfer orders dated 20.06.2018 and 25.02.2019 are quashed and set aside.
- (C) The Respondent is directed to restore the Applicant to the post he was transferred from within two weeks from today.
- (D) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai
Date : 23.09.2019
Dictation taken by :
S.K. Wamanse.