

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

**ORIGINAL APPLICATIONS 476, 495, 502 & 503
OF 2016**

DIST : SANGLI, PUNE, MUMBAI

1. ORIGINAL APPLICATION NO. 476 OF 2016

Shri Sunil Bhimrao Gidde,)
Working as Police Inspector,)
Office of Anti Corruption Bureau,)
Near Sangli Rural Police Station,)
Khanbhag, Sangli.)...**Applicant**

Versus

1. The State of Maharashtra)
Through Chief Secretary,)
Mantralaya, Mumbai 400 032.)
2. Additional Chief Secretary,)
Home Department,)
Mantralaya, Mumbai 400 032.)
3. The Director General of Police,)
Maharashtra State,)
Shahid Bhagatsingh Marg,)
Colaba, Mumbai 400 001.)

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4. The Director General of Police,)
 Anti-Corruption Bureau,)
 Sir Pochkhanwla Road, Worli,)
 Mumbai.)...**Respondents**

2. ORIGINAL APPLICATION NO. 495 OF 2016

- Shri Ajit Dhondiram Dalvi,)
 Working as Assistant Police Inspector,)
 R/at 983, Kharalwadi, Pimpri,)
 Pune 411 018.)...**Applicant**

Versus

1. The State of Maharashtra)
 Through Chief Secretary,)
 Mantralaya, Mumbai 400 032.)
 2. Additional Chief Secretary,)
 Home Department,)
 Mantralaya, Mumbai 400 032.)
 3. The Director General of Police,)
 Maharashtra State,)
 Shahid Bhagatsingh Marg,)
 Colaba, Mumbai 400 001.)
 4. Superintendent of Police,)
 Pune Rural, Pashan Road, Pune.)...**Respondents**

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3. ORIGINAL APPLICATION NO. 502 OF 2016

Shri Sunil Jaysing Tambe,)
 Working as Police Inspector,)
 R/at H-8, Sankul, Next to Dinanath)
 Hospital, Erandawana,)
 Pune 411 008.)...**Applicant**

Versus

1. The State of Maharashtra)
 Through Chief Secretary,)
 Mantralaya, Mumbai 400 032.)
2. Additional Chief Secretary,)
 Home Department,)
 Mantralaya, Mumbai 400 032.)
3. The Director General of Police,)
 Maharashtra State,)
 Shahid Bhagatsingh Marg,)
 Colaba, Mumbai 400 001.)
4. Additional Director General of)
 Police, Anti Terrorism Squad,)
 [A.T.S], Nagpada, Mumbai.)...**Respondents**

4. ORIGINAL APPLICATION NO. 503 OF 2016

Shri Arvind Tulshiram Gokule)
 Working as Police Inspector,)

R/at Goodwill Enclave-IV)
 Opp. Maharashtra Bank, Kalyaninagar)
 Pune 411 008.)...**Applicant**

Versus

1. The State of Maharashtra)
 Through Chief Secretary,)
 Mantralaya, Mumbai 400 032.)
2. Additional Chief Secretary,)
 Home Department,)
 Mantralaya, Mumbai 400 032.)
3. The Director General of Police,)
 Maharashtra State,)
 Shahid Bhagatsingh Marg,)
 Colaba, Mumbai 400 001.)
4. Additional Director General of)
 Police, Anti Terrorism Squad,)
 [A.T.S], Nagpada, Mumbai.)...**Respondents**

Smt Punam Mahajan, learned advocate for the Applicants.

Smt Kranti S. Gaikwad learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

DATE : 29.09.2016

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ORDER

1. Heard Smt Punam Mahajan, learned advocate for the Applicants and Smt Kranti S. Gaikwad learned Presenting Officer for the Respondents.
2. These Original Applications were heard together and are being disposed of by a common order as the issues to be decided are more or less identical.
3. The Applicant in O.A no 476/2016 was working as Assistant Police Inspector (A.P.I) when he was transferred from Anti Corruption Bureau (A.C.B) to Gadchiroli Range by the Police Establishment Board no. 2 by order dated 24.5.2016. The Applicant in O.A no 495/2016 also an A.P.I has been transferred from Pune (Rural) to Nagpur (Urban). The Applicant in O.A no 502/2016, a Police Inspector has been transferred from Anti Terrorist Squad (A.T.S) to Railway Police Commissionerate, Mumbai and the Applicant in O.A no 503/2016, also a Police Inspector, has also been transferred from A.T.S to Railways, Mumbai by order dated 24.5.2016. All the four Applicants claim that they have not completed their tenures as prescribed in Section 22N(1)(c)(d) & (e) of the Maharashtra Police Act. The Applicants and their tenures are given below:-


Sr No.	Application No.	Posting	Date
1.	Applicant in O.A no 476/2016	A.C.B	03.06.2015
2.	Applicant in O.A no 495/2016	Dehu Road Police Station, Pune	17.08.2015
3.	Applicant in O.A no 502/2016	A.T.S, Pune	05.06.2014
4.	Applicant in O.A no 503/2016	A.T.S, Pune	09.11.2012

Learned Counsel for the Applicants argued that the A.C.B and A.T.S are Specialized Agencies as per Section 2(14A-1) of the Maharashtra Police Act (M.P.A). As per Section 22N(1)(e), the normal tenure of a A.P.I or P.I in a Specialized Agency is 3 years. For Police Station posting normal tenure of an A.P.I or P.I is two years. The Applicants (except in O.A no 503/2016) had not completed their normal tenures and therefore, their transfer orders are bad in law as no special reasons were there for their transfers. As regard the Applicant in O.A no 503/2016, he had completed his tenure but his transfer order is stigmatic, on the basis of a default report. Learned Counsel for the Applicants argued that the transfer orders of other Applicants (except the Applicant in O.A no 503/2016) have been issued without application of mind and in complete violation of the provisions of Section 22N(2) of Maharashtra Police Act. Police Establishment Board no. 2 (P.E.B-2) does not have

powers to transfer any Police Personnel who had not completed his tenure. Such powers are with the State Government only. The P.E.B-2 had not brought out what were the exceptional circumstances to transfer the Applicants. Learned Counsel for the Applicants prayed that impugned orders dated 24.5.2016 qua the Applicants in all cases may be quashed and set aside.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents that the Applicants have been transferred by the Competent Authority viz. P.E.B-2 in exercise of powers conferred on it by Section 22N(2) of Maharashtra Police Act. The Applicants have been transferred 'mid-term', as there were serious complaints against them and their continuation in the posts they were occupying would have caused serious damage to the image of the Police among the public. As such, exceptional cases were made out in each of the case, which justified the transfer of the Applicants. In O.A no 503/2016, the Applicant had completed his normal tenure of 3 years in A.T.S and he was due for transfer. The order of his transfer does not suffer from any legal infirmity and there is no cause for interference by this Tribunal.

5. It is seen that this Tribunal has passed detailed interim orders in O.A no 476/2016 and 495/2016. It will be instructive to read the orders dated



1.6.2016 (O.A no 476/2106) and 3.6.2016 (O.A no 495/2016).

6. In O.A no 476/2016, the report against the Applicant dated 30.3.2016 mentioned that the Applicant was not taking interest/showing enthusiasm in his work. This Tribunal was not prima facie satisfied that such a report can be valid ground for 'mid-tenure' transfer of a Police Personnel. Section 22N(2) of the Maharashtra Police Act, does not include this as a ground for mid-term transfer of a Police Personnel. In the affidavit in reply filed by the Respondent no. 4 dated 13.7.2016, in para 6, the Applicant is held to be not working diligently or sincerely. In the report dated 30.3.2016, reproduced in interim order dated 1.6.2016, words like विशेष रस (which may be translated as keen interest) and निरुत्साह (non-enthusiasm) are used. Obviously, the Respondents are trying to improve their case by using different words in the affidavit in reply, than what were used in the default report. Keeping aside the question whether the default report was actually considered by P.E.B-2 in its meeting held on 24.5.2016 aside, it is quite clear that default report dated 30.3.2016 cannot be a ground for mid-term transfer of a Police Personnel under Section 22N(2) of the Maharashtra Police Act. The impugned transfer order dated 24.5.2016 qua the Applicant in O.A no 476 of 2016 is clearly not maintainable.

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7. In O.A no 495/2016, default report is dated 19.5.2016. It will be instructive to reproduce para 8 of the interim order dated 3.6.2016.

“8. The Applicant impugns the order of transfer dated 24.5.2016 whereby he has been transferred from Pune Rural to Nagpur City. He had not completed his tenure and that is a factual position not very seriously disputed. Now the Ld. PO in stoutly opposing the grant of any interim relief furnishes for my perusal the extract of record which apparently was before the PEB. Ld. PO submits that the impugned order having been made in accordance therewith no interim relief need to be granted. I have perused the said record and I find that taking it ex-facie when the applicant was stationed at Lonand in Satara District on 7.2.2015 he allegedly committed a misconduct. Initially a punishment was imposed stopping his increment for one year but that was reduced to censure. There are some averments about some secret information about the extra martial Shenanigans of the Applicant. But as far as this last information is concerned even at interim stage I can mention with a fair degree of certainty that it would be extremely unsafe to work on such allegations although there is no approving such a conduct. No doubt, if at least to a certain extent proved it would diminish

the police image but on a mere say so ipse dedit about such serious allegations if the authorities were to act it would be as I mentioned above hazardous.”

8. In the affidavit in reply dated 22.6.2016, the Respondent no. 3 has heavily relied on the same default report dated 19.5.2016 received from the Respondent no. 4. This Tribunal had already noted that mere say so about marital Shenanigans of the Applicant would not be correct. There is no report that this allegation was inquired into and substance was found. In the earlier case in Lonand Police Station, in Satara, the Applicant had already been punished. In fact, there is no exceptional case for transferring the Applicant ‘mid-term’ under Section 22N(2) of the Maharashtra Police Act has been made out. The impugned order dated 24.5.2016 qua the Applicant is not sustainable.

9. In O.A no 502/2016, the Applicant has been transferred on the basis of meeting of PEB-2 dated 24.5.2016. By a common order dated 26.8.2016 in a Group of O.A nos 471/2016 etc., which is also regarding the Police Inspectors, transferred by the same impugned order dated 24.5.2016, this Tribunal has held that there was no material on record to conclude that PEB-2 in its meeting held on 24.5.2016 had applied its mind before deciding to transfer the Applicants therein. The same is

true here and in the present case the reasons for transfer of the Applicant should have been mentioned in the transfer order itself and no post facto justification by way of affidavit can be accepted for such an order. The facts and circumstances in the case of the Applicant in this Original Application are more or less identical. The Applicant was transferred on the basis of report of the Commissioner of Police, Pune to the Respondent no. 3 that his integrity was doubtful and that he is involved with land mafia and gangsters. This report is dated 18.5.2016. The Applicant was not working under the control of the Commissioner of Police, Pune. The report of Commissioner of Police, Pune is in general terms and there is no material or enquiry report to support allegations against the Applicant. Such a report can never be a ground for mid-term transfer of a Police Personnel. The impugned order dated 24.5.2016 qua the Applicant is unsustainable.

10. In O.A no 503/2016, the Applicant had completed his tenure of 3 years in A.T.S. He was liable to be transferred out of A.T.S when the impugned order dated 24.5.2016 was issued. The only ground for challenge of the aforesaid order is that it is a stigmatic order. The order reads:-

“उपरोक्त संदर्भात नमूद केल्याप्रमाणे महाराष्ट्र पोलीस अधिनियम, १९५१ मधील कलम-२२ न मधील पोट कलम (२) सह सन -२०१५ चा महाराष्ट्र अधिनियम क.११,

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दिनांक ०६/०४/२०१५ मधील पोट कलम (२), मधील सुधारीत स्पष्टीकरणानुसार पोलीस आस्थापना मंडळ क्र.२ यांना अपवादात्मक प्रकरणांमध्ये जनहितार्थ आणि प्रशासनिक निकडीनुसार सक्षम प्राधिकारी म्हणून प्रदान असलेल्या अधिकारांचा वापर करून खालील नमूद निःशस्त्र पोलीस निरीक्षकांच्या त्यांच्या नावांसमोर दर्शविल्याप्रमाणे बदल्या करण्यात येत आहेत. सदरहू बदल्या करताना खालील नमूद निःशस्त्र पोलीस निरीक्षकांच्या बाबतीत संबंधीत घटकप्रमुखांकडून प्राप्त झालेल्या अहवालांचा विचार पोलीस आस्थापना मंडळ क्र.२ यांनी केल्यानंतर खाली नमूद केल्याप्रमाणे त्यांच्या मुदतपूर्व बदल्या जनहितार्थ आणि प्रशासनिक निकडीनुसार करण्यात येत आहेत.”

This order itself does not state that the Applicant was being transferred due to default report. It merely mentions that there were 'reports' about officers from Unit Heads. The name of the Applicant is at Sr. no 47. Prima facie, the order cannot be called a stigmatic order. For some reason, the Respondents have tried to justify this order qua the Applicant on the basis of report of the Police Commissioner, Pune. It is already held that Police Commissioner, Pune, was not the Unit Head of the Applicant and his report dated 18.5.2016 does not have any evidentiary value. As the impugned order itself is not stigmatic, there is no reason for this Tribunal to interfere with this order. This Original Application is not maintainable.

11. Having regard to the aforesaid facts and circumstances of these cases, Original Applications no 476/2016, 495/2016 & 502/2016 are allowed and the interim orders dated 1.6.2016, 3.6.2016 and 6.6.2016

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respectively in these O.A merge with the present order.
O.A no 503/2016 is dismissed. There will be no order as
to costs.

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai

Date : 29.09.2016

Dictation taken by : A.K. Nair.

H:\Anil Nair\Judgments\2016\1st Sep 2016\O.A 476.16 and ors Transfer order
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