

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.518 of 2020**

Shri Amol V. Bhise, )  
Aged 36 Yrs., Working as Police Naik. )  
R/at C-1/C-30, Raut Baugh Society, Teen )  
Hatti Chowk, Dhankawadi, Pune 411 043. )...**Applicant**

**Versus**

1. The State of Maharashtra, )  
Through Additional Chief Secretary, )  
Home Department, Mantralaya, )  
Mumbai 400 032. )
2. The Commissioner of Police, Sadhu )  
Vaswani Chowk, Church Path, Agarkar )  
Nagar, PUNE – 411 001. ) **...Respondents**

Smt. Punam Mahajan, learned Advocate for the Applicant.

Shri A. J. Chougule, learned Presenting Officer for the Respondent.

CORAM : Shri A.P. Kurhekar, Member-J

DATE : 25.08.2021

**J U D G M E N T**

1. The Applicant has challenged the transfer order dated 26.09.2020 whereby he was transferred from Chaturshringi Police Station to Head Quarter i.e. Commissioner of Police, Pune *inter alia* contending that it is in contravention of provisions of Maharashtra Police Act.

2. Shortly stated facts giving rise to the O.A. are as follows:-

The Applicant is serving as Police Naik on the establishment of Respondent No.2 – The Commissioner of Police, Pune. By order dated 31.05.2018, the Respondent No.2 transferred him from Alankar Police Station to Chaturshrungi Police Station, Pune. He being Police Naik entitled for five years tenure at Chaturshrungi Police Station. However, abruptly he was transferred mid-term and mid-tenure by order dated 26.09.2020 from Chaturshrungi Police Station to Head Quarter, Pune which is under challenge in present Original Application.

3. Smt. Punam Mahajan, learned Counsel for the Applicant sought to assail the impugned transfer order *inter-alia* contending that no such case or administrative exigency is made out for such mid-terms and mid-tenure transfer in terms of Section 22N(2) of Maharashtra Police Act. She has pointed out that the minutes of Police Establishment Board (PEB) by which the Applicant was transferred are too vague and general and nothing specific is attributed or considered by PEB. It is generalized transfer order. She has further pointed out that report dated 10.03.2020 sent by Shri Anil Shewale, Sr.P.I., Chaturshrungi Police Station to Commissioner of Police cannot be the foundation for such mid-term transfer since it is in context of some marital dispute and apprehension of happening of some incident as mentioned in the letter, is totally unfounded. In fact it no more survived since the Applicant and Police Constable Smt.Sayali Shinde got married on 11.03.2020. She has further pointed out that subsequently Smt. Sayali Shinde, Police Constable was transferred to Traffic Branch and Shri Bhikan Bide who was divorced husband of Smt.Sayali Shine is also transferred to Head Quarter. She, therefore, submits that there is absolutely no case much less to invoke Section 22N(2) of Maharashtra Police Act.

4. Per contra, Smt. Kranti Gaikwad, learned Presenting Officer sought to support the impugned transfer order *inter-alia* contending that there was apprehension of some untoward incident on account of matrimonial dispute between Smt. Sayali Shinde and her husband (divorced husband Bhikan Bapu Bide) and the Applicant while they were posted together at Chaturshringi Police Station. She, therefore, submits that the PEB recommended for the transfer of Applicant from Chaturshringi Police Station to Head Quarter, Pune.

5. True, the transfer is an incidence of Government service and no Government servant has vested right to continue at one place. However, the Applicants being Police Personnel, their transfers are now governed by the provisions of Maharashtra Police Act which has been amended in pursuance of decision rendered by Hon'ble Supreme Court in **(2006) 8 SCC 1 [Prakash Singh and Ors. Vs. Union of India and Ors.]**. The normal tenure of Police Personnel in the cadre of constabulary is five years as provided under Section 22N(1)(b) of Maharashtra Police Act. The constabulary is defined in Section 2(4A-1) means Police Constable, Police Naik, Police Head Constable and Assistant Sub-Inspector.

6. As per Section 2(6-A) of Maharashtra Police Act, the 'General Transfer' means posting of 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.

7. Whereas 'Mid-term transfer' as defined in Section 2(6-B) means transfer of a Police Personnel in the Police Force other than the general transfer.

8. As such, as per the scheme of Maharashtra Police Act, the Applicants are entitled to five years' tenure at one place of posting and in case mid-term transfer is necessitated, it has to be in consonance with Section 22N(2) of Maharashtra Police Act, which is as under :-

**“22N(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.

9. Suffice to say, transfers are now not left to the whims and caprice of the executive, but they are strictly controlled and governed by the provisions of Maharashtra Police Act, so that Police Personnel should get minimum normal tenure so as to discharge duties without fear and favour and to keep political influence at bay.

10. In pursuance of direction by Hon’ble Supreme Court in **Prakash Singh’s** case, the PEBs are established at various levels to consider general as well as mid-tenure transfers of Police Personnel and Police Officers. In the present case, the PEB at Commissionerate level is competent authority for transfer of the Applicants.

11. Now, question comes whether the Respondents have make out a case of mid-term/mid-tenure transfer on the touchstone of Section 22N(2) of Maharashtra Police Act.

12. The default/misconduct allegedly attributed to the Applicants is required to be examined to find out whether it makes out a case of mid-term/mid tenure under Section 22N(2) of Maharashtra Police Act.

13. To begin with before dealing with the alleged default attributed to the Applicants, it needs to be noted that the Applicant amongst other Police Personnel were transferred in pursuance of minutes of PEB held on 26.09.2020. The perusal of PEB minutes reveals that information about Police Personnel who have completed five years’ tenure were placed before PEB for general transfers of 2020. Accordingly, PEB considered the proposal placed before it and recorded minutes as under:-

“पुणे शहर आयुक्तालयाचे आस्थापनेवर कार्यरत पोलिस कर्मचारी एकूण ७५५४ असून विहित कालावधी पूर्ण झालेले बदलीपात्र कर्मचारी एकूण ९८६ आहेत. उपरोक्त शासन निर्णयानुसार बदलीपात्र कर्मचा-यांची १५ टक्के प्रमाणे एकूण ११३२ पोलिस कर्मचारी इतके होत आहेत.

कार्यालयीन आदेश क्रमांक आस्था ३(१)/सर्वसाधारण बदली-२०२०/आस्थापना मंडळ गठण/२०२०- ७०९९ दिनांक १०/८/२०२० अन्वये उपसमिती गठीत करण्यात आली होती. गठीत करण्यात आलेल्या उपसमितीने महाराष्ट्र पोलिस (सुधारणा) अध्यादेश, २०१४ अधिनियमातील नियम २(ख)(६) मध्ये नमूद केल्याप्रमाणे दिनांक ३१/०५/२०२० रोजी एका पोलिस ठाणे/शाखा येथे ५ वर्षांचा कार्यकाळ पूर्ण करणारे पोलिस कर्मचारी (सहाय्यक पोलिस उपनिरीक्षक ते पोलिस शिपाई) यांची महाराष्ट्र पोलिस अधिनियम-१९५१ मधील कलम २२(एन) तसेच सर्वसाधारण बदल्या संदर्भातील शासन निर्णय, शासन परिपत्रके, अध्यादेश याचे अनुषंगाने पडताळणी करून सर्वसाधारण बदल्या-२०२० चा अहवाल सादर केला आहे.

उपरोक्त मुख्य आस्थापना मंडळ यांनी उपसमितीने सादर केलेला सर्वसाधारण बदल्या-२०२० बाबतचा अहवाल स्वीकारला आणि उपसमितीने सादर केलेल्या शिफारशीप्रमाणे सहाय्यक पोलिस उपनिरीक्षक ते पोलिस शिपाई कर्मचारी यांच्या सर्वसाधारण बदल्या-२०२० करण्याचे सर्वानुमते मान्य करण्यात आलेले आहे. आस्थापना मंडळाने केलेल्या स्वीकृत केलेल्या अहवालानुसार विहित कालावधी पूर्ण केलेल्या बदलीपात्र कर्मचारी सहाय्यक पोलिस उपनिरीक्षक ७२, पोलिस हवालदार ४२२, पोलिस नाईक २६९, पोलिस शिपाई १८३ याप्रमाणे एकूण ९४६ पोलिस कर्मचारी यांच्या सर्वसाधारण बदल्या-२०२० बदल्यांची यादी सोबत जोडलेली आहे.

तसेच प्रशासकीय कारणास्तव सहाय्यक पोलिस उपनिरीक्षक ०९, पोलिस हवालदार १६, पोलिस नाईक ३९, पोलिस शिपाई १६९ याप्रमाणे एकूण २३३ व वैयक्तिक अडचणीस्तव विनंती केलेले कर्मचारी सहाय्यक पोलिस उपनिरीक्षक ०१, पोलिस हवालदार ३८, पोलिस नाईक १५, पोलिस शिपाई ५६ याप्रमाणे एकूण ११० असे एकंदरीत एकूण १२८९ पोलिस कर्मचारी यांच्या सर्वसाधारण बदल्या-२०२० बदल्यांची यादी सोबत जोडलेली आहे.”

14. Here we are concerned with the last Paragraph of the minutes whereby total 1289 Police Personnel/Police Officers were shown transferred citing administrative reason. The Applicants' case allegedly fall in the category of transfer on administrative ground as recorded in the last Paragraph of the minutes of PEB.

15. Thus, what is striking and important to note that except stating that these 1289 Police Personnel were transferred on administrative ground, no details of the administrative ground or default is forthcoming in minutes of PEB. *Ex-facia*, those were neither adverted to nor deliberated by the members of PEB otherwise it would have find place in the minutes of PEB. Suffice to say, there is absolutely no reference of any such default report and necessity of transfer of the Applicants

because of default report in the minutes of PEB. As such, there are reasons to say that no such default report was placed before PEB and it was not the reason for mid-term/mid-tenure transfer of the Applicants. They were simply shown transferred under the name of administrative exigency. Whereas, Section 22N(2) mandates that there has to be special exigency or public interest for such mid-term transfer of Police Personnel and it needs to be clearly spelt out from minutes of PEB. It is not empty formality but by way of safeguarded to fulfill the object of law.

16. Now turning to the report dated 10.03.2020 forwarded by Shri Anil Shewale, PI Chaturshrungi Police Station whereby he recommended for transfer of the Applicant apprehending some untoward incident is as follows:-

“ विषय :- पोलीस स्टेशनकडील कर्मचा-यांची बदली होणेबाबत.....

महोदय,

चतु:श्रृंगी पोलीस ठाणेस नेमणुकीस असलेले महिला पोलीस शिपाई ७१७७ सायली बाळासाहेब शिंदे या दि.२३.०६.२०१५ पासून पोलीस ठाणेस असून आमचे माहितीप्रमाणे तिचा पहिला विवाह पोना. विशाल काळे यांचेशी झाला होता त्यादोघांमध्ये काही कारणास्तव भांडणे होवून त्याचा एकमेकांमध्ये घटस्फोट झाला असून त्यानंतर मपोशि.७१७७ शिंदे यांनी चतु:श्रृंगी पोलीस ठाणेस नेमणुकीस असलेले पोना ६६७६ भिकन बापू बिडे यांचेशी दुसरा विवाह केला त्याचेमध्ये देखील कौटुंबिक कारणावरून वाद होवून त्याचांदेखील घटस्फोट झाला असून त्या दोघांना एक अपत्य आहे. आता मपोशि.७१७७ शिंदे व पोलीस ठाणेकडील नेमणुकीस असलेले पोना.६४२१ अमोल भिसे या दोघांचा विवाह होणार असून या तिघांमध्ये तणावाचे वातावरण निर्माण झाले असून काहीतरी अनुचित प्रकार घडण्याची शक्यता आहे तरी चतु:श्रृंगी पोलीस स्टेशनकडील १.पोना.६६७८ भिकन बापू बिडे, २.पोना.६४२१ अमोल वसंत भिसे, ३.मपोशि. ७१७७ सायली बाळासाहेब शिंदे यांची तात्काळ प्रभावीपणे इतत्र बदली होणेस विनंती आहे.’’

17. Thus, it appears that the Applicant was to get married with Constable Sayali Shinde and it was matter of concerned to PI. He apprehended happening of some untoward incident in Police Station. Indeed, it being marital affair of the Applicant, this would not form ground for mid-term transfer of the Applicant. The mandate of Section 22N(2) requires exceptional case or public interest or administrative

exigency for mid-term and mid-tenure transfer which is completely missing in the present case.

18. Apart, turning to the minutes of PEB there was absolutely no such discussion or deliberation in PEB. On the contrary, police personnel were transferred in one stroke without examining necessity of their transfer *vis-à-vis* administrative exigency or public interest. Indeed, there is no reference of report dated 10.03.2020 in the minutes of PEB held on 26.09.2020. It is thus obvious that without any discussion or deliberation, the PEB mechanically transferred the Applicant without bothering to see whether case is made out on the touchstone of Section 22N(2) of Maharashtra Police Act. If transfers effected in such cavalier manner are upheld, it would defeat the object of law.

19. Furthermore, nothing had taken place in between the period of six months i.e. from 10.03.2020 to 26.09.2020 i.e. the date of impugned order as apprehended by Shri Anil Shewale, Sr.PI in his letter dated 10.03.2020. Indeed, there is admission in Affidavit in Sur-rejoinder filed by Shri Ajay Bhimrao Waghmare, PI that Applicant and Constable Sayali Shinde got married on 11.03.2020 and it was best incident went against their prediction. Suffice to say, there was no such apprehension of any such untoward incident and the report was based only on surmises and conjecture. The Applicant and Constable Sayali Shinde got married on 11.03.2020 and are now posted at different places.

20. The totality of the aforesaid discussion leads me to sum that the impugned order is in blatant violation of Section 22 N (2) of Maharashtra Police Act and totally indefensible. It dehors the law and liable to be quashed. Hence, the following order:-

**ORDER**

- (A) Original Application is allowed.
- (B) Impugned transfer order dated 26.09.2020 qua the Applicant is quashed and set aside.
- (C) The Respondents are directed to repost the Applicant from the post he was transferred from within two weeks from today.
- (D) No order as to costs.

**Sd/-**

**(A.P. KURHEKAR)**  
**MEMBER (J)**

Date : 25.08.2021  
Place : Mumbai  
Dictation taken by :  
Vaishali Santosh Mane  
Uploaded on :  
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