

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.581 of 2020**

**District : PUNE**

Shri Ganesh Ashok Jagtap, )  
Aged 47 Yrs., Working as Head Constable )  
R/at Jay Ganesh Bungalow, Jagtap Diary, )  
Wakad, Pimple Nilkh, Pune 411 027. )...**Applicant**

**Versus**

1. The State of Maharashtra, )  
Through Additional Chief Secretary, )  
Home Department, Mantralaya, )  
Mumbai 400 032. )
2. The Commissioner of Police, Pune City, )  
Camp, 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 : 20.08.2021

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

The Applicant has challenged the order dated 12.10.2020 by which he was transferred mid-term and mid-tenure invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

2. Shortly stated facts giving rise to Original Application are as under :-

The Applicant is serving as Police Head Constable on the establishment of Respondent No.2- Commissioner of Police. By order

dated 12.10.2020, he was transferred from Special Branch to Bandgarden Police Station which is challenged in the present Original Application *inter-alia* contending he has been transferred mid-term and mid-tenure in contravention of provision of Maharashtra Police Act.

3. The Respondents resisted the application by filing Affidavit-in-Reply stating that in view of default report, the PEB thought it fit to transfer the Applicant and accordingly he has been transferred from Special Branch to Bandgarden Police Station by order dated 12.10.2020 invoking Section 22N (2) of Maharashtra Police Act.

4. Heard Smt. Punam Mahajan, learned Counsel for the Applicant and Shri A.J. Chogule, learned Presenting Officer for the Respondents.

5. In view of the submissions advanced at a bar and material placed on record, the issue posed for consideration is whether the transfer order dated 12.10.2020 is sustainable in law and the answer is in negative for the reasons to follow.

6. True, the transfer is an incidence of Government service and no Government servant has vested right to continue at one place. However, the Applicant being Police Personnel, his transfer is 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. As such, he is entitled to normal tenure of five years within the meaning of Section 22N(b) of Maharashtra Police Act.

7. 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.

8. 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.

9. Thus, as per the scheme of Maharashtra Police Act, the Applicant is 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.

10. 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.

11. 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 Applicant.

12. Turning to the facts of present case, indisputably the Applicant has not completed his normal tenure of five years at Special Branch but he was transferred by order dated 12.10.2020 on the ground of alleged default report.

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

14. Here it would be useful to see the alleged default report dated 09.10.2020 viz-a-viz Minutes of PEB which is at page Nos.43 and 44 respectively.

“ गोपनिय

ज.क्र.पोउपआ/विशा/०४.०१/२०२०  
पोलीस उप आयुक्त, विशेष शाखा,  
पुणे शहर,  
दिनांक ०९.१०.२०२०

प्रति,

मा.पोलीस आयुक्त,  
पुणे शहर

विषय :- गोपनिय चौकशी अहवाल सादर केलेबाबत

महोदय,

उपरोक्त विषयान्वये सविनय सादर की, आपण दिलेल्या मौखिक आदेशान्वये पो.हवा./२०१० गणेश अशाक जगताप नेम. विशेष शाखा यांचेबाबत गोपनियक चौकशी केली. सदर चौकशी दरम्यान असे निष्पन्न झाले की, गणेश जगताप हे पुणे शहरातील अवैध कारवायांमध्ये सहभागी असलेल्या गुन्हेगारांच्या संपर्कात असून अवैध धंदेवाल्यांकडून पेशांची वसूली करण्याचे काम करीत असल्याची माहिती प्राप्त झाली आहे.

तसेच वरिष्ठ अधिका-यांशी जवळीक असल्याचा बनाव करून त्यांचेकरी आपली प्रलंबित कामे मी करून देतो असे पोलीस अधिकारी, कर्मचारी व सर्वसामान्य नागरिकांशी बोलत असल्याचे खात्रीलायकरित्या समजते.

भविष्यात पो.हवा./२०१० गणेश अशोक जगताप यांच्या वर्तनामुळे पुणे शहर पोलीस दलाची प्रतिमा मलीन होण्याची दाट शक्यता आहे. सबब त्यांचेवर खात्यांतर्गत कारवाई होणे व दरम्यानच्या कालावधीत त्यांची विशेष शाखेतून अन्यत्र बदली होणे आवश्यक आहे.

Sd/-

(मितेश घट्टे)

पोलीस उप आयुक्त,

विशेष शाखा-१, पुणे.

Minutes of PEB are as under:-

#### कार्यवृत्तांत

पोलीस आयुक्त, पुणे शहर कार्यालयाच्या आस्थापनेवरील सहायक पोलीस उपनिरीक्षक ते पोलीस शिपाई यांची वार्षिक सर्वसाधारण बदली सन-२०२० मध्ये बदल्या करण्यासाठी पुणे शहर पोलीस आयुक्तालयामध्ये खालील नमुद सदस्यांचा समावेश असलेले पोलीस आस्थापना मंडळ महाराष्ट्र पोलीस अधिनियम-१९५१ मधील कलम २२ (आय)(१)(२) मधील तरतूदीप्रमाणे करण्यात आले आहे:-

- |   |                |
|---|----------------|
| १. श्री.अमिताभ गुप्ता (पोलीस आयुक्त)            | : - अध्यक्ष    |
| २. श्री.रवींद्र शिसवे (पोलीस सह-आयुक्त)         | : - सदस्य      |
| ३. डॉ.जालिंदर शिसवे (अपर पोलीस आयुक्त, प्रशासन) | : - सदस्य      |
| ४. श्री.मितेश घट्टे (पोलीस उप-आयुक्त, मुख्यालय) | : - सदस्य सचिव |

दिनांक २६.०९.२०२० रोजी आयोजित करण्यात आलेल्या आस्थापना मंडळाच्या बैठकीतील निर्णयानुसार व आस्थापना मंडळाने स्विकृत केलेल्या अहवालानुसार विहित कालावधी पूर्ण केलेल्या बदलीपात्र कर्मचारी सहायक पोलीस उपनिरीक्षक ७२, पोलीस हवालदार ४२२, पोलीस नाईक २६९, पोलीस उपनिरीक्षक ०९, पोलीस हवालदार १६, पोलीस नाईक ३९, पोलीस शिपाई १६९, याप्रमाणे एकूण २३३ व वैयक्तिक अडचणीस्तव विनंती केलेले कर्मचारी सहायक पोलीस उपनिरीक्षक ०१, पोलीस हवालदार ३८, पोलीस नाईक १५, पोलीस शिपाई ५६ याप्रमाणे एकूण ११० असे एकंदरीत एकूण १२८९ पोलीस कर्मचारी यांच्या सर्वसाधारण बदल्या २०२० बाबतचे आदेश या कार्यालयाचे आ.क्र.जा.क्र.आस्था ३(१) सर्वसाधारण बदल्या २०२०/८६५३/२०२०, दिनांक २६.०९.२०२० अन्वये निर्गमित करण्यात आले आहेत.

सदर आदेशातील नमूद काही पोलीस कर्मचा-यांच्या, त्यांच्या झालेल्या बदल्यांविषयी वैयक्तिक अडी-अडचणी, कर्मचा-यांचे विनंती/अर्जांनुसार दि.०८.१०.२०२० ते १२.१०.२०२० पर्यंत पोलीस कर्मचा-यांना अपर पोलीस आयुक्त, प्रशासन यांचे आज्ञांकित कक्षामध्ये बोलाविण्यात येऊन, त्यांच्या अडीअडचणी समजावून घेण्यात आल्या. प्रशासकीय कारण व विनंतीनुसार एकूण १६ कर्मचा-यांच्या बदली आदेशामध्ये बदल करण्यात आले, यामध्ये बदलीचे ठिकाण बदल/स्थगिती/रद्द हे बदल करण्यात आले. त्याप्रमाणे काही कर्मचा-यांचे कसूरी अहवाल/प्रतिकूल अहवाल प्राप्त झाले असून ते या आस्थापना मंडळासमोर ठेवण्यात आले. समितीने प्रति प्रकरण अवलोकन करून ते विचारात घेतले व त्यानुसार ०८ असे, एकंदरित २४ पोलीस कर्मचारी यांचे नव्याने बदली आदेश दिनांक ०९.१०.२०२० व १२.१०.२०२० रोजी निर्गमित करण्यात आले.”

15. Thus, from perusal of minutes of PEB, it is *ex-facis* that there was absolutely no deliberation or discussion on the alleged default report of 24 police personnel who were shown transferred on the ground of alleged misconduct. Apart what is stated in second part of minutes of PEB that in pursuance of default report the orders of transfers of 24 police personnel (including Applicant) have been issued on 09.10.2020 and 12.10.2020 meaning thereby transfer orders were already issued much earlier than the meeting of PEB. In other words, the transfer orders are issued first in sequence and later PEB recorded its minutes as clearly spelt out from the second part of minutes of PEB.

16. Material to see what the Respondents stated in reply about the date of PEB. In Para No.16 of reply, the Respondents stated that Confidential Reports (C.R.) were placed before PEB in meeting dated 26.09.2020 and after satisfaction of PEB, approved the transfers of 24 police personnel along with Applicant, and therefore, impugned order dated 12.10.2020 is passed by the Respondents. If it is so, then there

would have been no question of reference of issuance of order dated 09.10.2020 and 12.10.2020 in PEB minutes held on 26.09.2020.

17. It is thus obvious that transfer orders were issued on 12.10.2020, thereafter, minutes of PEB were recorded as it is *ex post facto* sanction which is impermissible in law. Indeed, as per mandate of Section 22N(2) of Maharashtra Police Act, the PEB was under obligation to see what were the allegation of misconduct attributed to the Applicant, its seriousness, necessity of transfer etc. However, instead of doing so, the PEB had mechanically transferred police personnel mid-term and mid-tenure without holding any discussion or deliberation.

18. If mid-term and mid-tenure transfers are allowed in such cavalier manner then it would frustrate the very object and intent of the amendment incorporated in Maharashtra Police Act in pursuance of the decision of Hon'ble Supreme Court in **(2006) 8 SCC 1 (Prakash Singh and Ors. Vs. Union of India and Ors.)**.

19 On the other hand, conversely, the Applicant has produced on record his ACR as well as recommendation made by the department for medal considering his meritorious service record. His ACRs are A+, A and B. There is nothing adverse in his ACRs in his entire service career as seen from the page Nos.13, 14 and 20 of PB. Apart, the Deputy Commissioner of Police, special Branch in which the Applicant was serving has strongly recommended the name of the Applicant for police medal for meritorious service on account of Republic Day, 2021. It is further certified by the Deputy Commissioner of Police that character antecedent of the Applicant has duly verified, nothing adverse is found against him. As such, in view of such good service record, the Applicant could not have been transferred without examining the veracity of default report dated 09.10.2020 by Deputy Commissioner of Police, Pune.

20. Suffice to say, the alleged default report run counter to the service record of the Applicant as well as recommendation made by his superiors for police medal.

21. Indeed, in terms of Circular dated 07.10.2016 issued by Special Inspector General of Police caution was issued that where the police personal are required to be transferred on default report then it should be done only after preliminary enquiry and compliance of principle of natural justice. It further provides that PEB should consider such report to find out whether such mid-term and mid-tenure transfer is in public interest or for administrative exigency and it should be recorded in the minutes of PEB. However, in the present case, indeed there was no such discussion or deliberation on the point of alleged default report much less satisfaction of PEB that mid-term or mid-tenure transfer is necessitated.

22. At this juncture, it would be apposite to refer the decision of Hon'ble Supreme Court in **(2009) 2 SCC 592 (Somesh Tiwari Vs. Union of India)**. Para No.16 of the Judgment is as under :-

*“16. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two kinds – one malice in fact and the second malice in law. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous compliant. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed in lieu of punishment, the same is liable to set aside being wholly illegal.”*

23. Furthermore, reference can be made to the decision of Hon'ble High Court in **Writ Petition No.7960/2011 (Harish Baijal Vs. State of Maharashtra)** wherein in Para No.10 held as follows :

*“10. It is well settled that transfer of a government servant is an incident of service and the courts should not interfere with such transfer orders, ordinarily. A*

*government servant holding a transferable post has no vested right to continue at a particular posting or at one place or the other. However, in the State of Maharashtra, the transfer orders are governed by a special statute i.e. the Transfer Act and if the procedure, as set out in the said Act, is not followed while issuing the transfer order, such order would be unsustainable. Similarly, if an order of transfer suffers from malice or if it has been issued by way of victimization or by way of a penal action, the court would be justified in setting aside such order.”*

As such, where transfer is on vague default report without enquiry and recording reasons it would amount to a cloak for punishment and clearly indefensible in law.

24. The principles enunciated in aforesaid decisions are squarely attracted to the present case and there is no escape from the conclusion that the impugned transfer order does not satisfy the mandate of Section 22N(2) of Maharashtra Police Act.

25. The necessary corollary of the aforesaid discussion leads me to conclude that impugned transfer order is totally unsustainable in law being in violation of mandate of Section 22N of Maharashtra Police Act. Hence the following order :-

**ORDER**

(A) Impugned transfer order dated 12.10.2020 qua the Applicant is quashed and set aside.

(B) The Applicant be reinstated in service on the post from which he was transferred within two weeks from today.

(C) No order as to costs.

**Sd/-**

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

Date : 20.08.2021

Place : Mumbai

Dictation taken by :

Vaishali Santosh Mane

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