

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.60 OF 2020**

Shri Nitin Pandurang Bhoyar, )  
Aged 46 years, worked as Deputy Superintendent )  
Of Police, Anti Corruption Bureau, Pune, )  
Having office at 'C' Barrack, Central Building, )  
Pune 1, R/o. Aurallya, A/304, Pancard Club Road, )  
Baner, Pune. )  
Address for service of notice : )  
Shri Arvind V. Bandiwadekar, )  
Office at 9, "Ram-Kripa", Lt. Dilip Gupte Marg, Mahim )  
Mumbai 400 016. )

**...Applicant**

**Versus**

1. The Director General and )  
Inspector General of Police, )  
M.S. Mumbai, having office at Old Council Hall, )  
Shahid Bhagatsinh Marg, Mumbai )
2. The Director General, )  
Anti Corruption Bureau, M.S., Mumbai )  
Office at Sir Pochkhanwala Road, Worli )  
Police Camp, Worli, Mumbai 30 )
3. The State of Maharashtra, )  
Through Additional Chief Secretary, Home )  
Department, having office at Mantralaya, )  
Mumbai 400 032 )

**...Respondents**

**Mr. Arvind V. Bandiwadekar, Advocate for Applicant.**

**Mrs. K.S. Gaikwad, Presenting Officer for Respondents.**

**CORAM : SHRI A.P. KURHEKAR, MEMBER-J**

**DATE : 30.06.2020**

### **JUDGMENT**

1. The Applicant has challenged the transfer order dated 09.01.2020 whereby he was transferred from the post of Deputy Superintendent of Police, Anti-Corruption Bureau, Pune to State Intelligence Department invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

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

The Applicant was initially serving in the cadre of Police Inspector in Pune city. By order dated 08.08.2019, he was promoted to the post of Deputy Superintendent of Police, Anti-Corruption Bureau, Pune fortuitously and accordingly, his pay was step-up and fixed in the cadre of Deputy Superintendent of Police, Anti-Corruption Bureau, Pune. His normal tenure is two years in terms of provisions of Maharashtra Police Act, 1951. However, abruptly, Respondent No.1 – Director General of Police transferred him by order dated 09.01.2020 mid-term and mid-tenure in view of recommendation of Police Establishment Board – 2 invoking Section 22N(2) of Maharashtra Police Act, 1951. The Applicant has been transferred from Anti-Corruption Bureau to State Intelligence Department on the post of Police Inspector. This order is under challenge in the present O.A.

3. Shri Bandiwadekar, learned Advocate for the Applicant assailed the impugned transfer order mainly on the following grounds :-

- (a) The Applicant has not completed normal tenure of two years on the post of Deputy Superintendent of Police, and therefore, the impugned order being mid-term and mid-tenure, it is bad in law sans administrative exigency or public interest.
- (b) Though promotion to the post of Deputy Superintendent of Police, Anti-Corruption is fortuitous promotion, for his transfer, the competent authority is Home Minister, that too, on the recommendation of PEB-1 as contemplated under Section 22D of Maharashtra Police Act, 1951. However, in the present case, the Applicant is transferred by PEB-2 treating the Applicant in the cadre of Police Inspector, and therefore, the impugned order is bad in law.
- (c) At the time of transfer, the Applicant was discharging the duties of Dy.S.P, Anti-Corruption Bureau, and therefore, for transfer of Applicant, out of ACB there has to be recommendation of PEB at the level of specialized agency viz. Anti-Corruption Bureau, as contemplated under Section 22J(4) of Maharashtra Police Act, 1951.
- (d) In alternative, the impugned transfer is punitive being on default report attributing misconduct to the Applicant, the appropriate authority is Home Minister only and not PEB. The impugned transfer order is also bad in law for want of compliance of Circulars issued by Respondent No.1 dated 07.10.2016 and 08.11.2017.

4. The learned Advocate for the Applicant, therefore, submits that the impugned transfer order being in defiance of express provisions of Maharashtra Police Act, 1951 is bad in law and liable to be quashed.

5. Per contra, Mrs. K.S. Gaikwad, learned Presenting Officer referred to Affidavit-in-reply filed by Respondent No.1 at Page Nos.49 to 67 of Paper Book and supported the impugned transfer order. She contends

that basically, the Applicant is in the cadre of Police Inspector and by order dated 08.08.2019, he was temporarily promoted to the post of Dy.S.P, Anti-Corruption Bureau and the said promotion being fortuitous, his basic cadre as Police Inspector has to be considered for transfer and accordingly, PEB-2 at the level of Director General of Police, as contemplated under Section 22(E) of Maharashtra Police Act, 1951 is competent authority and rightly recommended the transfer of the Applicant in view of default report. As regard default report, she submits that in the matter of misconduct of the Applicant, the enquiry was conducted by Additional Commissioner, Anti-Corruption Bureau and it was revealed that the Applicant has misused the Office of Anti-Corruption Bureau only to help one Shri Rajesh Taras. Adverting to this aspect, she submits that on receipt of Enquiry Report, the Respondent No.2 viz. Director General of Police, Anti-Corruption Bureau forwarded the proposal to Respondent No.1 – Director General of Police for his transfer and accordingly, the matter was placed before PEB-2 wherein it was unanimously, resolved to transfer the Applicant out of Anti-Corruption Bureau invoking Section 22N(2) of Maharashtra Police Act, 1951 which *inter-alia* empowers PEB to transfer Police Personnel in public interest and on account of administrative exigencies. She thus submits that the promotion of the Applicant being fortuitous, there was no need to place the matter before PEB-1. She sought to place reliance on the decision of Hon'ble Supreme Court in **(2004) 4 SCC 245 (Union of India and Ors. Vs. Janardhan Debanath & Anr.)** to substantiate that in case of serious misconduct, the employee can be transferred without holding an elaborate enquiry. She, therefore, prayed to dismiss the O.A.

6. Needless to mention that the transfer is an incidence of service and ordinarily, those are made in exercise of administrative function to meet the exigencies of service and in public interest. The order of transfer can be questioned in the Court or Tribunal only where it is in violation of express statutory provisions or *mala-fide*. Suffice to say, unless the

order of transfer is in conflict with the express provisions of law or *mala-fide*, the Court should decline to interfere in such transfer.

7. Admittedly, the Applicant was fortuitously promoted to the post of Dy.S.P, Anti-Corruption Bureau by order dated 08.08.2019 and he has not completed normal tenure of two years on the said post. As such, there is no denying that the Applicant has been transferred mid-term and mid-tenure.

8. The crux of the matter is whether PEB-2 which recommended for transfer of the Applicant is competent authority under the provisions of Maharashtra Police Act, 1951.

9. Here, it would be apposite to reproduce the relevant sections/provisions of Maharashtra Police Act, which are incorporated in the statute in pursuance of Judgment of Hon'ble Supreme Court in **(2006) 8 SCC 1 (Prakash Singh & Ors. Vs. Union of India & Ors.)**. These amendments were incorporated to ensure that the Police Personnel/Police Officer should get fix tenure as a normal tenure, so that they should discharge their duties without fear or favour and transfer should not be made by the executive as per their whims or desire. Consequent to direction of Hon'ble Supreme Court, various provisions were incorporated in Maharashtra Police Act in 2015. In the present matter, we are concerned with the provisions relating to transfer and competent authority for effecting the transfer.

10. Here, it would be appropriate to reproduce Section 22N, 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	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) Police Personnel up to the rank of Police Inspector for transfer out of the respective Range of Commissionerate or Specialized Agency.	Police Establishment Board No.2 ;”

11. Besides, in pursuance of directions of Hon’ble Supreme Court in **Prakash Singh’s** case (cited supra), the PEBs were established at various levels. The composition of the Board and its functions are also specified. Here, it would be apposite to reproduce Section 22C and Section 22D, which pertained to the composition and functions of PEB Board No.1.

**“22(C) 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 Police Establishment Board No.1.
- (2) The Police Establishment Board No.1 shall consist of the following members, namely :-
  - (a) Addition 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, Mumbai ... Member;
  - (e) Additional Director General &  
Inspector General of Police ...Member-Secretary:  
(Establishment)

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 purpose of this sub-section, the expression “Backward Class” means the Scheduled Castes, Scheduled Tribes, De-notified Tribes (*Vimukta Jatis*), Nomadic Tribes, Special Backward Categories and Other Backward Classes.”

**22(D) Functions of Police Establishment Board No.1**

The Police Establishment Board No.1 shall perform the following functions, namely :-

- (1) Subject to the provision of this Act, the Board constituted under sub-section (1) of Section 22C may make appropriate recommendations to the State Government regarding the service conditions of Police Officers excluding salary and allowance.
- (2) In particular and without prejudice to the generality of the foregoing functions, the Board may perform all or any of the following functions, namely :-
  - (a) to advice and make recommendations to the State Government regarding the posting and transfer of Police Officers [and the State Government shall give due weight to its recommendations];



(b) to make appropriate recommendations to the State Government in respect of grievances received by the said Board from Police Officers regarding their promotions, disciplinary proceedings and other service matters.

(3) The Board shall perform such other functions as may be assigned to the Board by the State Government, from time to time.

Explanation – For the purposes of this section, the expression “Police Officer” means a Police Officer of and above the rank of Deputy Superintendent of Police.”

12. Whereas, the composition and functions of PEB Board No.2 is defined in Section 22E and 22F of Maharashtra Police Act, which are as follows :-

**“22(E) Police Establishment Board No.2**

(1) The State Government shall, by notification in the Official Gazette constitute for the purposes of this Act, a Board to be called Police Establishment Board No.2.

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

- |   |                      |
|---|----------------------|
| (a) Director General and Inspector General of Police                          | ...Chairperson;      |
| (b) Director General, Anti-Corruption Bureau                                  | ...Member;           |
| (c) Commissioner of Police, Mumbai  | ...Member;           |
| (d) Additional Director General & Inspector General of Police (Law and Order) | ...Member;           |
| (e) Secretary or Principle Secretary, as the case may be (Appeal & Security)  | ...Member;           |
| (f) Additional Director General & 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 Castes, Scheduled Tribes, De-notified Tribes (*Vimukta Jatis*), Nomadic Tribes, Special Backward Categories and Other Backward Classes.”

## **22(F) Functions of Police Establishment Board No.2**

The Police Establishment Board No.1 shall perform the following functions, namely :-

- (1) Subject to the provisions of this Act, the Board constituted under sub-section (1) 22E may, make appropriate recommendations to the Competent Authority concerned, regarding the service conditions of Police Officers excluding salary and allowances. The Competent Authority shall normally act upon them.
- (2) In particular and without prejudice to the generality of the foregoing functions, the Board may perform all or any of the following functions, namely :-
  - (a) to decide posting and transfer of Police Officers;
  - (b) to make appropriate recommendations to the Competent Authority concerned, in respect of the grievances received by the Board from Police Officers regarding their promotions, disciplinary proceedings and other service matters;
  - (c) the Board shall perform such other functions as may be assigned to the Board by the State Government, from time to time;
- (3) Notwithstanding anything contained in clauses (1) and (2), the State Government may, from time to time, give directions in public interest and administrative exigencies in respect of postings, transfer and disciplinary matters relating to the Police Officers and such directions shall be binding on the Board.  
Explanation.- For the purposes of this section, the expression "Police Officer" means a Police Officer of and below the rank of the Police Inspector."

13. Besides, the PEBs have been constituted at the level of specialized agencies viz. CID, SID, Anti-Corruption Bureau, Reserve Police, etc. Here, we are concerned with composition and functions of PEB at the level of specialized agency viz. Anti-Corruption Bureau, which is defined in Section 22J(3) and 22J(4) of Maharashtra Police Act, which are as follows :-

### **"23J(3) Police Establishment Board at Levels of Specialized Agencies**

- (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 at the Levels of Specialized Agencies, namely Crime Investigation Department, State Intelligence Department, Protection of Civil Rights, Anti-Corruption Bureau, State Reserve Police Force, Anti-Terrorist Squad, Highway Traffic and Training Directorate.

- (2) The Police Establishment Board at the Level of Specialized Agencies shall consist of a Chairperson, as the Head of the concerned Specialized Agency and three senior-most Police Officers of that Specialized Agency:

Provided that, if none of the aforesaid members is from the backward class, then the concerned Head of the Specialized Agency shall appoint an additional member of any senior most Police Officer belonging to such Class.

Explanation – For the purposes of this sub-section, the expression “Backward Class” means the Scheduled Castes, Scheduled Tribes, De-notified Tribes (*Vimukta Jatis*), Nomadic Tribes, Special Backward Categories and Other Backward Classes.”

#### **23J(4) Functions of Police Establishment Board at Levels of Specialized Agencies**

The Police Establishment Board at the Levels of Specialized Agencies shall perform the following functions, namely:-

- (a) The respective Board shall decide all transfers and postings of all Police Personnel to the rank of Police Inspector without the Specialized Agencies.
- (b) The respective Board shall be authorized to make appropriate recommendations to the Police Establishment Board No.2, regarding the postings and transfers out of the Specialized Agency, of the Police Personnel to the rank of Police Inspector.

Explanation – For the purposes of this section, the expression “Police Personnel” means a Police Personnel to the rank of Police Inspector.

14. As stated above, the crux of the matter is whether PEB-2 which has recommended for the transfer of the Applicant is competent authority to transfer the applicant under provisions of Maharashtra Police Act, 1951 and in my considered opinion the answer is in negative for the reasons as follows.

15. It is explicit from the aforesaid provisions incorporated in Maharashtra Police Act, 1951, in pursuance of directions of Hon'ble Supreme Court in **Prakash Singh's case** supra Police Establishment Board are established at various levels to consider services related matters of the Police Personnel including transfer cadre wise.

16. Admittedly, in the present matter it is PEB-2 which is constituted under Section 22 E of Maharashtra Police Act approved the transfer of the Applicant. The thrust of submission of learned P.O. is that the applicant was promoted to the post of Deputy Superintendent of Police, Anti Corruption Bureau by way of fortuitous promotion in terms of G.R. dated 20.08.1985 and it being not substantive or permanent promotion basic cadre of the applicant is Police Inspector and therefore PEB-2 was competent authority for the transfer of the Applicant and accordingly invoked Section 22N(2) Maharashtra Police Act, 1951 as transfer of the Applicant was necessitated on account of administrative exigencies in public interest in view of default report of alleged misconduct.

17. To appreciate the submissions advanced at Bar, let us see the contents of G.R. dated 20.08.1985 (page 103 and 105 of P.B), on the basis of which applicant was fortuitously promoted to the post of Deputy Superintendent of Police, Anti Corruption Bureau. Perusal of the said G.R. reveals that the Government had taken policy decision to create 44 posts of Deputy Superintendent of Police, Anti Corruption Bureau after abolishing 8 posts of Police Inspector and 47 posts of Police Sub Inspector. The introductory part of G.R. further reveals that Government had taken said decision to promote eligible and good officers by way of incentive and their pay scale was also upgraded.

18. It is further clear from the said G.R. that the Police Inspector promoted on the basis of the said G.R. could continue to avail all service benefits to the post of Deputy Superintendent of Police, Anti Corruption

Bureau, so long as he is continued in Anti Corruption Bureau and the moment he is transferred out of Anti Corruption Bureau he would be reverted to the post of his substantive cadre of Police Inspector. In other words, promotion to the post of Deputy Superintendent of Police, Anti Corruption Bureau on the basis of G.R. 20.08.1985 would be fortuitous promotion. There is no denial that the promotion of the Applicant was fortuitous and his substantive cadre before promotion was of Police Inspector. Here crucial question would be whether he has to be considered Deputy Superintendent of Police, Anti Corruption Bureau or Police Inspector for the purpose of transfer in the light of provisions of Maharashtra Police Act.

19. Fortuitous promotion means temporary or adhoc promotion to be given as stopgap of arrangement till the said post is filled-in by regular promotion. All such temporary or fortuitous promotion are made considering requirement of the administrative so that the post of promotion should not be remain vacant for long period. This is generally termed as fortuitous promotion in service law.

20. Whereas in the present matter, by G.R. dated 20.08.1985 Government had created 44 posts of Deputy Superintendent of Police as incentive for good officers. This practice of promoting Police Inspector to the post of Deputy Superintendent of Police, Anti Corruption Bureau is in vogue for more than three decades without any interruption. This being position even if, technically the said promotion is fortuitous promotion, it is not fortuitous promotion as we commonly understand which are made in exceptional case as a stop gap of arrangement. This aspect needs to be borne in mind while considering the matter in issue in present case.

21. There is no denying that the Applicant was discharging the duties and functions attached to the post of Deputy Superintendent of Police, Anti Corruption Bureau and was availing all service benefits attached to the posts. In other words, he was treated and considered Deputy

Superintendent of Police, Anti Corruption Bureau for all purposes. As rightly pointed out by learned Advocate for the Applicant for purpose of Disciplinary action the Applicant would be liable considering his posts as Deputy Superintendent of Police, Anti Corruption Bureau and not as Police Inspector in view of explanation to Rule 2 of Maharashtra Police (Punishment and Appeals) Rules 1956, which is as follows :-

“Explanation – For the purposes of this rule-

- (1) a Police Officer officiating in a higher rank at the time of the commission of the default for which he is to be punished, shall be treated as belonging to that higher rank ;
- (2) the reversion of a Police Officer from a higher post held by him in an officiating capacity to his substantive post does not amount to reductions;”

22. Thus as per explanation even if the Applicant was officiating in higher rank he would be liable for Disciplinary action treating him as higher rank officer namely Deputy Superintendent of Police, Anti Corruption Bureau. In other words, he was to be treated as Deputy Superintendent of Police, Anti Corruption Bureau for the purpose of Disciplinary action and not as Police Inspector. This being the position, even if the Applicant's promotion is technically speaking fortuitous promotion and he was only officiating in higher rank of Deputy Superintendent of Police, Anti Corruption Bureau for misconduct / default if any, punishment should be given as if he is belonging to that higher rank of Deputy Superintendent of Police, Anti Corruption Bureau. If this is the position it is incomprehensible to contend that for transfer purpose he was to be treated as Police Inspector and to be deny him the protection available to the post of Deputy Superintendent of Police, Anti Corruption Bureau in the provisions of Maharashtra Police Act which *inter alia* provides that the matter pertains to the transfer of Deputy Superintendent of Police, Anti Corruption Bureau falls within the ambit of PEB-1 and not PEB-2. In my considered opinion, there cannot be two separate criteria unless law provides so. As the Applicant was discharging all duties and functions of the post of Deputy Superintendent of Police, Anti Corruption Bureau there is no logic to

treat him as Police Inspector for the purpose of transfer and PEB-2 cannot be said competent authority for the transfer of the Applicant.

23. Material to note that as per Section 22N for the transfer and Police Personnel of the above, the rank of Deputy Superintendent of Police, Anti Corruption Bureau, Home Minister is competent authority for the general transfer. Whereas as the Section 22N(2) in the exceptional case, in public interest and account of administrative exigency the competent authority is empowered to make mid term transfer of any Police Personnel. As per explanation to Section 22N(2) the expression "Competent Authority" shall mean Home Minister for transfer of Police Personnel of and above the rank of Deputy Superintendent of Police. Whereas, as per Section 22(D) and (C) there shall be Police Establishment Board No.1 for the transfer and other service related matters of Police Officers of and above the rank of Deputy Superintendent of Police. It is thus manifest that the Police Establishment Board No.1 constituted as per Section 22(C) whose functions are defined in Section 22(B) of Maharashtra Police Act is the only competent authority for the transfer of the Applicant being holding position of Deputy Superintendent of Police, Anti Corruption Bureau.

24. Whereas in the present transfer of the Applicant was approved by PEB-2 constituted as per Section 22E of Maharashtra Police Act which is empowered to consider the transfer and other services related matters of the Police Personnel of and below rank of Police Inspector, which is contrary to law.

25. Apart, the Applicant being working in ACB the reference of PEB constituted for specialized agency in terms of Section 22J-3 of Maharashtra Police Act is material. As per this provision State Government was required to constitute Police Establishment Board at levels of Specialized Agency namely CID, SID, ACB etc. Pertinent to note that as per Section 22J-4 (b) of Maharashtra Police Act in even in the matter of transfer of the Police Personnel to the rank of Police Inspector

outside specialized agency law requires that such PEB established at ACB level shall make appropriate recommendation to PEB-2 regarding posting and transfer of Police Personnel to the rank of Police Inspector out of the Specialized agency. As such even assuming for a moment that the Applicant was to be treated as Police Inspector for posting and transfer, then in that event also by impugned order he being transferred to Intelligence Department Law mandates that PEB established at ACB level shall first make recommendation to the PEB-2 for transfer of Police Personnel to the rank of Police Inspector out of specialized agency and then only PEB-2 shall consider the same. Whereas in present case, admittedly, there is no such recommendation by PEB established at the level of ACB by Notification dated 18.01.2016. Learned Advocate has rightly pointed out that Government had constituted PEB at the level of ACB by Notification dated 18.01.2016 before whom the matter of transfer of the applicant was required to be first placed for its recommendation to PEB-2.

26. Suffice to say even assuming that the Applicant was to be treated as Police Inspector for posting and transfer still there is no compliance of Section 22J4 (b) of Maharashtra Police Act which inter alia mandates that for transfer of Police Inspector out of ACB there has to be recommendation of PEB at specialized agency to PEB-2.

27. In the present case, PEB-2 approved the transfer of the Applicant without any recommendation by PEB at the level of ACB therefore, on this count also impugned transfer order is unsustainable in law. Needless to mention when law requires particular procedure and mode for the transfer of Police Personnel then the same deserves to be followed and in later and spirit and departure from the express provisions of law is not permissible.

28. As stated above, even assuming for a moment that the Applicant's transfer was necessitated on account of administrative exigencies or in



public interest as contemplated under Section 22N(2) which is invoked in the present matter, in that event also competent authority contemplated under Section 22N(2) is Home Minister for such mid term or mid tenure transfer in public interest and not PEB-2. Respondents considered the Applicant as Police Inspector and in that assumption placed the matter before PEB which is ex-facie contrary to law. Even if, the Applicant was promoted fortuitously he was discharging duties of Deputy Superintendent of Police, ACB and competent authority for transfer is the Home Minister. Suffice of say, the impugned transfer order is in defiance of express provisions of Maharashtra Police Act and PEB -2 has no jurisdiction or competency to transfer the Applicant. Needless to mention order passed by authority without jurisdiction is non-est in law. The impugned transfer order is therefore liable to be quashed and set aside.

29. Learned Advocate for the Applicant further tried to pick hole contending that the impugned transfer order is punitive being on default report and therefore it is malicious and deserves to be quashed on this ground also. He further contend that there is no compliance of circular dated 08.11.2017 (page 28 of P.B.) issued by Specialized Director General of Police which *inter alia* provide for enquiry in the matter of transfer of Police Personnel on complaint of misconduct. Referring to circular dated 08.11.2017 he submits that in such matter opportunity of hearing needs to be given to the concerned employee by recording his statement which is not done in the present matter.

30. The discussion on this point would be only academic in view of finding recorded above that PEB-2 is not competent to transfer the applicant. However, the issue being raised it needs to be dealt with.

31. As regard transfer on default report the perusal of preliminary enquiry report dated 11.11.2019 (page 69 to 74) reveals that one Shri Rajesh Taras was running chit fund in which one Shri Vijay Date had invested huge amount and there was dispute in between them about the

amount payable to Shri Vijay Date. Shri Vijay Date lodged complaint against Shri Rajesh Taras and his brother with Chinchwad Police Station and in Sequel crime No.265/2019 was registered under Section 406 and 420 of IPC. Shri Rajesh Taras had also lodged complaint on 23.08.2019 against Shri Vijay Date alleging that latter is demanding Rs.1 crore to withdraw the complaint. The matter was under investigation of the Applicant. In the preliminary enquiry conduct of Deputy Commissioner of Police it was revealed that the Applicant was unnecessarily investigating such matter as it was not the case of investigation by ACB. In preliminary enquiry report, it is further observed that the Applicant was keeping relation with Shri Rajesh Taras who had criminal antecedents and the Applicant had misused the office of ACB only to help him. Therefore in enquiry report recommendation was made to transfer the Applicant out of ACB. The Inspector General, ACB accordingly forwarded proposal to Director General of Police for his transfer and then, it was placed before the PEB-2.

32. True, in terms of circular dated 08.11.2017 issued by Inspector General of Police, Mumbai in case of mid-term transfer of Police Personnel on complaint the statement of concerned Police Personnel is required to be recorded. However, this aspect lost its significance in view of the decision of Hon'ble Supreme Court **Union of India and other v/s. Janardhan Debanath and Another, (2004) 4 SCC 245,** in paragraph 14 held as follows :-

14. The allegations made against the respondents are of serious nature, and the conduct attribute is certainly unbecoming. Whether there was any misbehaviour is a question which can be gone into in a departmental proceeding. For the purposes of effecting a transfer, the question of holding an enquiry to find out whether there was misbehaviour of conduct unbecoming of an employee is unnecessary and what is needed is the prima facie satisfaction of the authority concerned on the contemporary reports about the occurrence complained or and if the requirement, as submitted by learned counsel for the respondents, of holding an elaborate enquiry is to be insisted upon the very purpose of transferring an employee in public interest or exigencies of administrative to enforce decorum and ensure probity would get

frustrated. The question whether the respondents could be transferred to a different division is a matter for the employer to consider depending upon the administrative necessities and the extent of solution for the problems faced by the administrative. It is not for this Court to direct one way or the other. The judgment of the High Court is clearly indefensible and is set aside. The writ petitions filed before the High Court deserve to be dismissed which we direct. The appeals are allowed with no order as to costs.”

33. As such, this authority is clear answer to the submission advanced by the learned Counsel for the Applicant. In the matter of transfer that there is no requirement of full-fledged enquiry for effecting the transfer of the Government servant when serious allegations of misconduct are attributed to him. Whether, the Government servant could be transferred to a different division is a matter for administration to consider depending upon the administrative necessities and the extent of solution of situation occurred due to alleged mis-conduct of the employee. If probity requires the transfer of the Applicant outside ACB, then such decision of the transfer of the Applicant cannot be interfered with on the ground of non holding full-fledged enquiry as this Tribunal is not supposed to sit in judgment. Preliminary enquiry was conducted wherein misconduct was attributed to applicant and his continuation in ACB found not desirable. Suffice to say, the submission advanced by the learned Counsel for the Applicant on this score holds no water. However, the impugned transfer order is liable to be quashed as it is not approved by the competent authority as discussed above.

34. The totality of the aforesaid discussion of law and facts leads me to sum up that the impugned transfer order is in contravention of express provisions of Maharashtra Police Act and consequently not sustainable in law. Impugned transfer order therefore deserves to be quashed and set aside.

**ORDER**

- (a) Original Application is allowed.
- (b) Impugned transfer order dated 09.01.2020 is quashed and set aside.
- (c) Applicant be reinstated on the post he is transferred from within two week's from today.
- (d) No order as to costs.

Sd/-  
**(A.P. KURHEKAR)**  
**Member-J**

Mumbai  
Date : 30.06.2020  
Dictation taken by :  
S.K. Wamanse.

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