

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH**

**ORIGINAL APPLICATION NO 608 OF 2016**

**DISTRICT : PUNE**

Shri Sadashiv Bhujangrao Jadhav, )  
R/at : Shri Harihar Krupa, Jagtap Mala, )  
Kasba-Baramati, Tal-Baramati, )  
Dist-Pune 413 102. )...**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, S.B Marg )  
Colaba, Mumbai 411 001. )
4. The Superintendent of Police, )  
Solapur Rural, S.P Office, )  
Collector Office Compound, )  
Siddheshwar Peth, )  
Solapur 413 003. )...**Respondents**

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Shri S.S Dere, learned advocate for the Applicant.

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

**CORAM : Shri Rajiv Agarwal (Vice-Chairman)**

**DATE : 19.08.2016**

**ORDER**

1. Heard Shri S.S Dere, learned advocate for the Applicant and Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.
2. This Original Application has been filed by the Applicant challenging his transfer from Solapur (Rural) District to Washim District by order dated 24.5.2016 on the ground that the aforesaid order has been issued in violation of Section 22N of the Maharashtra Police Act.
3. Learned Counsel for the Applicant argued that the Applicant was posted to Solapur (Rural) District by order dated 26.5.2014. The Applicant had not completed his tenure of four years in Solapur district, which is provided in Section 22N(1)(c) of the Maharashtra Police Act. The impugned transfer order does not disclose any reason for transfer of the Applicant. Learned Counsel for the Applicant stated that in the affidavit in reply the

Respondent no. 3 has stated that the Applicant was transferred on the basis of report of the Respondent no. 4 dated 23.5.2016 as his performance was found to be very negligent and he was often coming to duty after consuming alcohol. He had no control over Police Personnel working in the Police Control Room in Solapur. He was often reporting sick. His behavior was adversely affecting general working of other Police Personnel and, therefore, he was recommended for transfer. The report was considered by the Police Establishment Board no. 2. Learned Counsel for the Applicant argued that this report was never mentioned in the impugned order. Minutes of the P.E.B-2 do not disclose that the said Board considered this report. Learned Counsel for the Applicant stated that for the sake of argument, even if it is accepted that this report was considered by the Police Establishment-2, the reasons disclosed in the report do not meet the reasons on which the Competent Authority can order mid-tenure transfer as per Section 22N(2). Learned Counsel for the Applicant argued that the Applicant is due to retire on superannuation on 31.5.2017. He has requested the Respondents to post him in his home district or in Satara district. However, his request has not been considered and he has been posted to Washim district.

4. Learned Presenting Officer argued on behalf of the Respondents that the Applicant has been transferred

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on the basis of report dated 23.5.2016 from the Respondent no. 4. This report discloses that the Applicant was continuously under the influence of liquor on duty and he was negligent in his duties. He had no control over the Staff and he was proceeding on leave time and again. Learned Presenting Officer argued that Hon'ble Bombay High Court in the case of **S.N DALAL Vs. STATE OF MAHARASHTRA & ORS : 2016 (1) Mh.L.J 45** has held that the Court/Tribunal is not expected to act as an appellate authority. If there is nothing to infer favouritism or malafide, Court/Tribunal is not expected to interfere in transfer orders, made after following procedure. Learned Presenting Officer argued that in this case, there is no allegation of favouritism or malafide and no interference is called for.

5. The Applicant had admittedly not completed his tenure of four years in Solapur district which is mandated by Section 22(1)(c) of the Maharashtra Police Act. The Applicant is a Police Inspector and for mid-term transfer out of the respective range, the Competent Authority under Section 22N is P.E.B-2. The Competent Authority can order transfer as per Section 22N(2) which reads:-

“ (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.”

The grounds mentioned in section 22N(1) are:-

- (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.

In the present case, report of the Respondent no. 4 dated 23.5.2016 does not disclose any of these reasons. At the most, it can be considered under (e) above. However, for that to be valid, the Police Personnel has to be ‘guilty’ of dereliction of duty. However, there is nothing on record to show that the Applicant was held ‘guilty’ of dereliction of duty. None of these grounds are mentioned in the aforesaid report, in my considered view.

6. Now coming to other grounds mentioned in section 22N(2), a Police Personnel can be transferred mid-term in exceptional cases. The impugned transfer

order does not disclose any exceptional circumstances. The report dated 23.5.2016, may invite disciplinary proceedings against the Applicant. However, there is nothing on record to show that any such proceedings are contemplated. Even assuming that P.E.B-2 has considered this report dated 23.5.2016, it cannot be a ground to transfer a Police Personnel under Section 22N(2) of the Maharashtra Police Act. It is clarified that there is nothing on record to suggest that P.E.B-2 actually considered this report. Neither the minutes of the meeting of P.E.B-2 where the impugned transfer order was approved, nor the impugned order itself discloses that this report was ever considered by the P.E.B-2. Hon'ble High Court in DALAL's case (supra) has held that Courts/Tribunals should not interfere in transfer order made after following procedure. The procedure has to be as prescribed by law. If the law prescribes that the Competent Authority can order mid-term transfer of a Police Personnel on the grounds mentioned in the Act, it cannot be said that procedure is followed, unless, it can be shown that the grounds mentioned in the Act exist and the same were duly considered by the Competent Authority. In this case, there is nothing on record to suggest that the default report dated 23.5.2016 was even considered by P.E.B-2. Whether the grounds mentioned in the default report meet the requirement of Section 22N(2) is another matter. In fact, it is difficult to hold that the grounds

mentioned in the default report meet the requirement of Section 22N(2) of Maharashtra Police Act. The impugned order qua the Applicant cannot be sustained.

7. Having regard to the aforesaid facts and circumstances of the case, the transfer order dated 24.5.2016 qua the Applicant is quashed and set aside. This Original Application is accordingly allowed with no order as to costs.

Sd/-   
**(Rajiv Agarwal)**  
**Vice-Chairman**

**Place : Mumbai**  
**Date : 19.08.2016**  
**Dictation taken by : A.K. Nair.**