

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.621 OF 2022  
With  
ORIGINAL APPLICATION NO.622 OF 2022**

**DISTRICT: PUNE  
SUBJECT: Transfer**

**ORIGINAL APPLICATION NO.621 OF 2022**

Shri Mahesh S. Salunke, )  
Aged 36 yrs, Police Naik, R/at Survey No.61/7/1, )  
Lane No.3, Sail Nagar, Sukhsagar Nagar, Kondhwa )  
Bhu-2, Pune 411048. )... **Applicant**

**Versus**

- 1) The State of Maharashtra, )  
Through its Secretary, Home Department, )  
Mantralaya, Mumbai-32. )
- 2) The Commissioner, Commissioner of Police, )  
Maharashtra State, Pune City, Dist. Pune. )...**Respondents**

**ORIGINAL APPLICATION NO.622 OF 2022**

Shri Surendra Dilip Jagdale, )  
Aged 38 yrs, Head Constable, R/at Flat No.12, A-wing )  
Dhona Nahar Height, near Amba Mata Mandir, )  
Sukhsagar Nagar, Katraj, Pune 411046. )... **Applicant**

**Versus**

- 1) The State of Maharashtra, )  
Through its Secretary, Home Department, )  
Mantralaya, Mumbai-32. )
- 2) The Commissioner, Commissioner of Police, )  
Maharashtra State, Pune City, Dist. Pune. )...**Respondents**

Shri M. B. Kadam with Ms Savita Suryavanshi, Advocates for Applicants.  
Shri. A.J. Chougule Presenting Officer for Respondent No.1

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

**DATE : 01.03.2023**

### **JUDGMENT**

1. Both the Original Applications are arising from identical situation and, therefore, decided by common order. In both the Original Applications, the Applicants have challenged transfer order dated 16.11.2021 whereby they are transferred from Crime Branch, Pune to Head Quarter, Pune alleging that they are transferred mid-term and mid-tenure maliciously in contravention of Maharashtra Police Act, 2015.

2. The Applicants are serving as Police Constable on the establishment of the Respondent No.2 - C.P. Pune. The Applicant in O.A.No.621/2022 was transferred from Khadak Police Station to Crime Branch by order dated 13.01.2021 and posted in Narcotic Cell which is the part of Crime Branch. Whereas, the Applicant in O.A.No.622/2022 was transferred from Faraskhana Police Station and posted in Crime Branch by order dated 26.09.2020. Thus, they were entitled to 5 years tenure in terms of Section 22(1) (e) of Maharashtra Police Act. However, in O.A.No.621/2022, in view of the report made by Police Inspector, Crime Branch dated 12.11.2021, he was transferred by impugned order dated 16.11.2021 to Head Quarter, Pune. Insofar as O.A.No.622/2022 is concerned, the Applicant was also transferred by impugned order dated 16.11.2021 from Crime Branch to Head Quarter in view of the report submitted by Deputy Commissioner of Police attributing some lapses to him. Being aggrieved by transfer orders, the Applicants have filed these Original Applications *inter-alia* contending that though they have very good service record and where given awards/appreciation letters from time to time, they are transferred mid-term and mid-tenure in contravention of provisions of Maharashtra Police Act.

3. Shri M.B. Kadam, learned Counsel for the Applicants sought to assail the impugned transfer orders pointing out that the Applicants service record is very good. They were given awards/appreciation letters from time to time and their ACRs of the relevant period are also very good/outstanding. He, therefore, submits that the impugned transfer orders on the basis of default report is not sustainable and it attracts malice and stigmatic.

4. Per contra, Shri A. J. Chougule, learned P.O. submits that the Applicants transfer was found necessitated in view of default report dated 12.11.2021 and the PEB in its meeting dated 16.11.2021 recommended for transfer of the Applicants. He does not dispute that Applicants service record is good and they got cash prizes from time to time. However, he sought to defend the impugned transfer orders contending that in view of default report, the PEB has taken decision to transfer the Applicants and it being administrative decision, it should not be interfered with in limited jurisdiction of judicial review.

5. In view of submission advanced, the issue posed for consideration is whether the impugned transfer orders are sustainable in law.

6. Indisputably, an order of transfer is an administrative order and Government servant has no legally vested right to continue at particular posting at one place, it being incidence of Government service. However, now the transfers are governed by the provisions of Maharashtra Police Act in which important amendments were made in pursuance of the decision of the Hon'ble Supreme Court in **(2006) 8 SCC 1 (Prakash Singh & Ors. V/s Union of India & Ors.)**. In terms of it, the Applicants are entitled to five years tenure at one place of posting. At the same time Section 22N(2) of Maharashtra Police Act empower the competent authority for mid-term and mid-tenure transfer in exceptional cases, in public interest and on account of administrative exigencies. As such, now the transfers are not left to the whims of caprice of the executive,

but they are strictly controlled and governed by the Maharashtra Police Act.

7. Now, turning to the facts of the present case, in O.A.No.621/2022 the Applicant is transferred on the basis of report of PI. Prakash Khandekar dated 12.11.2021 (Page No.48 of PB). In his report, he stated that for last four months the Applicants performance is not satisfactory and there is no hope for improvement in future. He, therefore, recommended for his transfer from Crime Branch to other places.

8. Whereas in O.A.No.622/2022, the Deputy Commissioner of Police by letter dated 12.11.2021 informed to C.P. Mumbai that Applicant is not punctual and his performance is not satisfactory and he is avoiding orders given by superiors (Page No.88 of PB).

9. Now, it comes to minutes of PEB which is at page no.49 of PEB. The PEB all that recommended for transfer of the Applicant from Crime Branch to Head Quarter in reference to default report referred to above. Except reference of default report, there is absolutely no further discussion or deliberation in PEB about nature of defaults, its seriousness etc. All that PEB simply transferred the Applicants on the basis of default reports. Indeed, in terms of Circular dated 07.10.2016 issued by Inspector General of Police where transfer is necessitated on account of default report, there has to be preliminary enquiry and prima-facie satisfaction of the concerned authority. It further provides that there should be specific mention in the minutes of PEB as to whether transfer is in public interest or for administrative exigency. However, in present case, there is absolutely no such deliberation about the lapses attributed to the Applicants. There is nothing on record that at any point of time notices or memo given to the Applicants for the lapses now attributed to them much less preliminary enquiry.

10. In contrast, the service record of both the Applicants is very good and it run counter to default report and lapses attributed to them.

Insofar as Applicant in O.A.No.621/2022 is concerned, he got 168 prices /appreciation letters for his performance. Furthermore, interesting to note that his ACR for the year 2021 is rated as 'outstanding'. He is graded 'A+'. In the column of general assessment, it is stated that he is sincere, hardworking, reliable and very good and takes initiative in all work. There is also reference of cash prizes and appreciation letters for 168 time to him in ACR of 2021 which is at page no.11 of PB. Then again in ACR of 2022 (page 112 of PB), he is shown to have received total 179 prices/appreciation letters and again rated as 'outstanding'. He was not subjected to any punishment of any nature in past as seen from ACR. Amazing to note that the ACR of 2021-2022 has been written by PI- Prakash Khandekar who himself gave default report dated 12.11.2021 for his transfer. This is something strange and, in such situation, how much credibility is to be given to his letter dated 12.11.2021 is questionable.

11. Similar situation is in O.A. No.622/2022. The Applicant in this O.A. has also tendered the copies of ACR which are at page nos.185 and 186 of PB. In ACR of 2021 written by Deputy Commissioner of Police, he is rated very good police personnel('A+'). In general assessment, it is stated that he takes initiative, very good in drafting, correspondence, bandobast and reliable. In ACR there is specific mentioned that he got 543 cash prizes and appreciation in his service tenure. In next ACR of 2022, he rated as 'outstanding' (A+). Here notably, the ACR of the years of 2021-2022 has been written by Shri Vivek Patil, Deputy Commissioner who was one of the member of the PEB as seen from Minutes of PEB. It again shows that the casual recommendations made by the PEB for transfer of the Applicants.

12. It is thus explicit that there is no objective assessment of situation in respect of alleged default report and the PEB mechanically transferred the Applicants. The credibility of default reports is thus questionable in view of excellent service record of the Applicants. The PEB thus

mechanically transferred the Applicants without ascertaining and verifying the correctness of default reports. No explanation for such contradictory situation is forthcoming. In such situation, the order of transfer is arbitrary and non-application of mind is obvious. It amounts to clock on punishment and totally unsustainable in law.

13. The totality of aforesaid discussion leads me to conclude that the impugned transfer order is totally indefensible and liable to be quashed. Hence, the following order :-

**ORDER**

- (A) Both the Original Applications are allowed.
- (B) Impugned transfer order dated 16.11.2021 is quashed and set aside.
- (C) The Applicants be reposted on the post they were transferred from within two weeks from today.
- (D) No order as to costs.

Sd/-

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

Place : Mumbai  
Date : 01.03.2023  
Dictation taken by : *Vaishali S. Mane*

