

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.711 OF 2018**

**DISTRICT : PUNE**

Shri Bhausahab Ramhari Khatke. )  
Age : 34 Yrs., Occu.: Police Naik at Police HQ, )  
Shivaji Nagar, Pune and Residing at Survey No. )  
176, Prabha Apts., Flat No.205, Papde Vasti, )  
Bhekra Nagar, Hadapsar, Pune. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through the Secretary, Home Dept., )  
Mantralaya, Mumbai. )
2. The Commissioner of Police. )  
Sadhu Vaswani Road, Camp, )  
Pune – 411 001. )
3. The Joint Police Commissioner. )  
Sadhu Vaswani Road, Camp, )  
Pune – 411 001. )
4. The Deputy Commissioner. )  
Zone 4, Zonal Office, Near Gunjan )  
Talkies, Yerwada, Pune – 411 006. )...**Respondents**

**Mr. K.R. Jagdale, Advocate for Applicant.**

**Mr. A.J. Chougule, Presenting Officer for Respondents.**

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

**DATE : 26.03.2019**

### **JUDGMENT**

1. The Applicant has challenged the impugned order dated 06.07.2018 whereby he was transferred from Mundhwa Police Station, Pune to Police Head Quarter, Pune invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

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

The Applicant was initially appointed as Police Constable in 2007 and promoted to the post of Police Naik in 2016. He was transferred to Mundhwa Police Station, Pune on 04.06.2016. Since then, he was posted at Mundhwa Police Station till the passing of impugned order. On 24.02.2018, while he was discharging his duties as Beat Marshal, he received information of sell of illicit liquor in the Grocery Shop of Mr. Samadhan Khodse at Keshav Nagar, Pune. Therefore, he along with Constable Shri Kakde visited the shop of Mr. Samadhan Khodse, but did not find illicit liquor in the shop. He instructed Mr. Samadhan Khodse not to indulge in any such illicit business. That time, Mr. Samadhan Khodse allegedly admitted that he sells illicit liquor in shop with the protection of Police and stated that he regularly pays bribe to Police Constable Vilas Jagdale who happens to be the Driver of Police Inspector, Mundhwa Police Station. As such, though he was discharging his duties faithfully, at the instance of complaint by Police Constable Vilas Jagdale, show cause notice was issued to him on 21.04.2018 about the incident occurred on 24.02.2018. Accordingly, he submitted explanation. However, abruptly, by order dated 06.07.2018, he has been transferred from Mundhwa Police Station to Police Head Quarter, Pune which is now under challenge contending that it being mid-term and mid-tenure transfer is illegal and malafide. He further contends that his normal tenure is six years but under the garb of shifting, he has been transferred without compliance

of Section 22-N of Maharashtra Police Act by order of Respondent No.3 - Joint Police Commissioner. He contends that the Respondent No.3 is not competent to pass such order, and therefore, the order is unsustainable in law. He further contends that there is no approval of Police Establishment Board (PEB), and therefore, the impugned order is *ex-facie* illegal and liable to be set aside.

3. The Respondents resisted the application by filing Affidavit-in-reply (Page Nos.45 to 57 of the Paper Book) *inter-alia* denying that the impugned order suffers from any illegality. The Respondents contend that on 24.02.2017, the Applicant visited grocery shop of Mr. Khodse and demanded Rs.500/- bribe from him. Mr. Khodse, therefore, lodged complaint with P.I, Mundhwa Police Station on the same day and preliminary enquiry was conducted. Show cause notice was given to the Applicant. In preliminary enquiry, the Applicant was found *prima-facie* guilty, and therefore, on administrative ground, he was shifted/ attached to Police Head Quarter, Pune. Thus, according to Respondents, it is internal shifting/attachment within the Commissionerate and does not come within the ambit of transfer envisaged in Section 22-N of Maharashtra Police Act, 2015. The Respondents thus contend that there was no requirement of approval of PEB and order is legal and valid.

4. Shri K.R. Jagdale, learned Advocate for the Applicant vehemently urged that the impugned transfer being mid-term and mid-tenure, it has to be in consonance with the mandatory requirement of Section 22N of 'Act 2015'. He canvassed that the stand taken by Respondents that it is mere internal shifting within the Commissionerate area and does not amount to transfer, is not legally tenable in view of various decisions rendered by this Tribunal. There being admittedly no approval of PEB and the sanction by competent authority, the impugned transfer order is obviously illegal and deserves to be set aside. He referred various Judgments passed by this Tribunal in this behalf.

5. Per contra, Shri A.J. Chougule, learned Presenting Officer reiterated the contentions raised in reply and sought to contend that it being internal shifting within the Commissionerate area, the same cannot be termed as transfer in the eye of law and the Commissioner is entitled to do so. He further canvassed that her shifting was necessitated having noticed the Applicant's misconduct. According to him, there is no *malafide* in the impugned order, and therefore, the challenge is untenable.

6. In view of submissions and contentions raised by the learned Counsels, the following points arise for determination.

- (A) Whether the impugned transfer order dated 06.07.2018 is mere internal posting or it amounts to transfer and Respondent No.2 is competent in law to pass such order.
- (B) Whether the impugned order dated 06.07.2018 is in contravention of Section 22N(1) and 22N(2) of 'Act 2015'.

7. Shri K.R. Jagdale, learned Advocate for the Applicant has referred to the recent Judgment passed by this Tribunal in ***O.A.No.861/2018 (Rajendrakumar V. Trivedi Vs. State of Maharashtra & Ors.) decided on 28.11.2018*** wherein the Assistant Commissioner of Police was transferred within the Commissionerate, that too, with the approval of PEB and highest competent authority. This Tribunal turned down similar contention that it is internal change and not amounts to transfer. In the facts and circumstances of the case, the O.A. was allowed. In this O.A, the Tribunal has considered various earlier Judgments passed by this Tribunal and came to the conclusion that, such order of internal change amounts to transfer in the eye of law.

8. The point in issue that the internal change or posting within the Commissionerate area amounts to transfer is no more open to debate in view of various decisions rendered by this Tribunal, as discussed elaborately in ***Trivedi's***

matter. Therefore, it would be apposite to refer the relevant Chart from the Judgment in *Trivedi's* matter, which is as follows :

Sr. Nos.	Particulars	Subject matter
1.	O.A.193/2016, dated 24.02.2016	<p>Transfer of ACP from Mahim to Armed Police Branch within city by interim order dated 24.02.2016. The Tribunal observed that in view of amendment of Maharashtra Police Act by Ordinance of 16.02.2015, the situation has gone drastic change and the Judgments delivered in context of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as "Act of 2005") holding that transfer at same station will not amount to transfer and will not apply to transfers effected under Maharashtra Police Act and interim stay was granted.</p> <p>The order dated 24.02.2016 has been confirmed by Hon'ble Bombay High Court in Writ Petition No.3894/2016 on 04.04.2016 with the observation that, view taken by the Tribunal that posting from one Police Station to another Police Station constitute transfer and PEB alone is not competent to issue such transfer orders in respect of ACP.</p>
2.	Order of Hon'ble High Court dated 07.03.2018 in Writ Petition No.202/2018	<p>This is arising from order passed by this Tribunal in O.A.404/2017 decided on 06.12.2017 whereby challenge to the transfer of ACP from one place to another in Commissionerate, Pune was rejected in view of Judgment of Hon'ble Bombay High Court in Rajan Bhosale Vs. State of Maharashtra (Writ Petition No.1062/2013). However, the Hon'ble Bombay High Court set aside the order passed by this Tribunal on the ground that the Judgment in Rajan Bhosale's case is prior to the amendment of Maharashtra Police Act and remanded the matter for fresh decision with direction to decide the same in the light of amended Section 22N of Maharashtra Police Act. The O.A.404/2017 is still sub-judice.</p>
3.	O.A.609/2015, dated 10.03.2016	<p>Transfer of Police Inspector from Bibvewadi, Pune to Traffic Branch in Pune City. It was held transfer and not mere internal posting. Plea of reference to Larger Bench was considered and rejected. O.A. was allowed.</p>

4.	O.A.466/2016, dated 12.07.2016	Mid-tenure transfer by PEB on the ground of incompetence and adverse report. Transfer held as unsustainable and O.A. was allowed.
5.	O.A.13/2017, dated 22.09.2017	Mid-term transfer of PSI on recommendation of PEB from Mudkhed, District Nanded to Shivaji Nagar, Nanded. O.A. was allowed on the ground of irregularities in the constitution of PEB and minutes found manipulated.
6.	O.A.562/2015, dated 20.11.2015	Transfer of Police Personnel working in the rank of Constables to Assistant Sub Inspectors working in Traffic Branch Room and transferred out of Traffic Branch. O.A. was allowed on the ground that it amounts to transfer.
7.	O.A.191/2015, dated 26.10.2015	Transfer of Police Inspector from Paund Police Station to Pune Rural Control Room. It was mid-tenure. It was held without approval of the competent authority and in contravention of Section 22N of Maharashtra Police Act. O.A. was allowed.
8.	O.A.505/2016, dated 09.08.2016	Transfer of Police Inspector from Palghar to Nagpur City. O.A. was allowed as constitution PEB found not in accordance to law because of absence of only independent member amongst other grounds.
9.	O.A.546/2014, dated 16.09.2014	Transfer of Police Inspector from MIDC Police Station, Solapur to Security Branch, Solapur. It was held that it amounts to mid-tenure transfer in contravention of Section 22N(2) of Maharashtra Police Act. O.A. was allowed.
10.	O.A.621/2016, dated 09.08.2016	Relate to inter-district transfer of Police Personnel. O.A. was allowed on the ground that transfer was in violation of G.R. dated 08.12.2009 amongst other grounds.
11.	O.A.69/2015, dated 19.03.2015	Transfer of Superintendent of State Excise which was challenged under Act of 2005. Transfer held arbitrary. O.A. was allowed.

9. At this juncture, it would be appropriate to reproduce relevant amended provision of Maharashtra Police Act, which are as follows :

“[(6A) “General Transfer” means posting of a 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];

(6B) “Mid-term Transfer” means transfer of a Police Personnel in the Police Force other than the General Transfer;]”

Whereas amended Section 22N is reproduced 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 or Commissionerate or Specialized Agency	....	Police Establishment Board No.2;
(d)	Police Personnel up to the rank of Police Inspector for transfer within the respective Range,	....	Police Establishment Boards at the Level of Range, Commissionerate or



Commissionerate or Specialized Agency	Specialized Agency, as the case may be;
(e) Police Personnel up to the rank ... of Police Inspector for transfer within the District.	Police Establishment Board at District Level.

Provided that, in case of any serious complaint, irregularity, law and order problem the highest Competent Authority can make the transfer of any Police Personnel without any recommendation of the concerned Police Establishment Board.]”

10. It is thus quite clear that, amended provisions incorporated in 2015 clearly provides for elaborate structure of tenures in different posts *vis-à-vis* Departments.

11. As stated above, these amendments were incorporated in view of the direction given by the Hon’ble Apex Court in ***Prakash Singh’s*** case (cited supra). This aspect has been dealt with in some detail by this Tribunal in ***O.A.Nos.466 and 467 of 2016 (Shri Arun R. Pawar Vs. The State of Maharashtra & Ors.) decided on 12.07.2016***. It will be appropriate to reproduce Para Nos.5 & 6 of the order which are as under:

*“5. The issues herein involved including the one under consideration befall the ambit of the provisions of the Maharashtra Police Act, 1951 as amended from time to time including on 6th April, 2015. The rest of the provisions are also important, but the pivotal provision herefor is Section 22(N) of the said Act. It cannot be disputed that in a historical perspective, as a result of the judgment of the Hon’ble Supreme Court in Prakash Singh and others Vs. Union of India and others (2006) 8 SCC Page 1 (Prakash Singh’s case), the State Government constituted what has come to be known as Police Establishment Board (to be hereinafter called Board). Be it noted at this stage itself that transfer is one aspect of the service condition of the Government employees and in this case Police Personnel which has engaged of late the attention of the society, and therefore, of all the 3 wings of the State including the judiciary. It is not necessary at this stage to delve into the details thereof and it would suffice to mention that on account of various aberrations and other factors which were not quite honourable, the need was felt to streamline, regularize and make transparent the facet of transfer of the Government employee which in this case happen to be Police Personnel. Therefore, that aspect of the matter has now become statute regulated and that is relatable to the mandate of the Hon’ble Supreme Court in Prakash Singh’s case. Therefore, it will have to be zealously guarded and made sure that the transfer aspect of the matter is not made light of and is made strictly adhering to the statutory principles and also to translate into*

reality the legislative intent which in turn as mentioned above, traces its origin to the mandate in *Prakash Singh's* case.

6. Another aspect of the matter is that these disputes are brought before a forum which generally and by and large exercises jurisdiction of judicial review of administrative action with all the well known jurisdictional constraints. However, an approach which may lead to practical refusal to exercise jurisdiction at all even when there is a statutory mandate which traces its origin to the law laid down by the Hon'ble Supreme Court, then the judicial forum must guard thereagainst and must show awareness to the need of making sure that the statutory mandate was properly observed and if it is found even on a surface view that it was not, then there would be no other-go but "to act" in so far as the judicial forum is concerned."

12. The perusal of newly incorporated Section 22N, bearing in mind the definition of 'General Transfer' given in Section 2(6)(A) and definition of 'Mid-term Transfer' given in Section 2(6)(B) as reproduced above, clearly indicates the legislature's intention to ensure fixed normal tenure of the Police Personnel at a particular post. This seems to have been done by legislature in its wisdom to meet the compliance of the directions given by the Hon'ble Apex Court in ***Prakash Singh's*** case letter and spirit. Needless to mention that the provisions incorporated by way of amendment in 2015 needs to be complied with to fulfill the object behind the amendments. It needs to be strictly adhered to into reality and cannot be trampled upon.

13. Shri K.R. Jagdale, learned Advocate for the Applicant further placed reliance on the Judgment of Hon'ble Supreme Court in **(2009) 2 SCC 592 (*Somesh Tiwari Vs. Union of India & Ors.*)** wherein the Hon'ble Supreme Court held as under :

*"An order of transfer is an administrative order. Transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia malafides on the part of the authority is proved. Mala fides are of two kinds – first, malice in fact and 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 to passing of an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in an anonymous complaint. 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 be set aside being wholly illegal. No vigilance enquiry was initiated against appellant. Transfer order was passed on material which was non-existent. The order suffers not only from non-application of mind but also suffers from malice in law."*

14. Shri K.R. Jagdale, learned Advocate for the Applicant further placed reliance on the decision passed by Hon'ble Chairman in ***O.A.No.900 of 2018 (Prashant Pisal Vs. Principal Secretary, Revenue & Forest Department) decided on 20.12.2018***. In this O.A, the Applicant has challenged his transfer from the post of Assistant District Supply Officer, Pune to the post of Tahsildar, Haveli, Pune and the defence that it is local shifting and not transfer, has been turned down by the Hon'ble Chairman and transfer being found not in consonance under Section 4(4)(ii) and 4(5) of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005' (hereinafter referred to as 'Transfer Act 2005') quashed and set aside. This Judgment has been confirmed by Hon'ble High Court, as seen from the decision in Writ Petition No.91/2019, decided on 04.01.2019.

15. Per contra, Shri A.J. Chougule, learned Presenting Officer placed reliance on the Judgment of Hon'ble High Court in ***Writ Petition No.10622/2013 (Rajan Bhosale Vs. State of Maharashtra) decided on 24.12.2013***. This matter pertains to the posting of Police Officer within the Commissionerate. The Hon'ble High Court held that it does not amount to transfer envisaged in 'Transfer Act 2005'. Significant to note that it was the matter before enforcement of the amendments in Maharashtra Police Act in 2015 which have been introduced in compliance of the direction of Hon'ble Supreme Court in ***Prakash Singh's*** case. These amendments made in 2015 provide elaborate structure and tenure of Police Officials and transfers are no required to be routed through PEB in the manner laid down therein. Therefore, this authority with great respect is of little

assistance to the Respondents in the present situation in the light of amended provisions of Maharashtra Police Act.

16. The learned P.O. placed reliance on the Judgment of Hon'ble Bombay High Court in ***Writ Petition No.7554/2013 (Pradip B. Lonandkar Vs. State of Maharashtra & Ors.) decided on 22.11.2013.*** This case relates to transfer of Police Personnel by order of Commissioner of Police under 'Transfer Act 2005'. The learned P.O. further referred to the Judgment passed by this Tribunal in ***O.A.897/2014 (Sudam Mandharekar Vs. Commissioner of Police) decided on 19.12.2014*** with connected O.As. In this case also, the challenge was to the transfer the Police Personnel within the city. In so far as these Judgments are concerned, those are of little assistance to the Respondents while considering the transfer of Police Personnel after the amendments to Maharashtra Police Act, 2015. In fact, these Judgments have been already discussed and distinguished by the Tribunal in O.A.No.562/2015 as shown at Serial No.8 of above Chart.

17. The learned P.O. further sought to place reliance on the Judgment of Hon'ble Bombay High Court in ***Writ Petition No.1277 of 2016 (Sanjay Deshmukh Vs. State of Maharashtra) decided on 05.05.2016.*** I have gone through the Judgment wherein the transfer was approved by PEB and was found in consonance with Section 22-N(2) of Maharashtra Police Act. In so far as the present case is concerned, admittedly, there is no approval of PEB, and therefore, it is of little assistance to the Respondents. The learned P.O. also made reference to ***O.A.No.467/2017 (Vazeer Hussain Shaikh Vs. State of Maharashtra) decided on 15.11.2017,*** which has been confirmed by Hon'ble High Court in ***Writ Petition No.6809/2017 decided on 15.11.2017.*** In that matter, there was local transfer approved by PEB and was found in consonance with Section 22-N(2) of Maharashtra Police Act, and therefore, in fact situation, the transfer was upheld. Therefore, it is also of little assistance to the Respondents.

18. As such, in view of catena of decisions rendered by this Tribunal, the contention of the learned P.O. that the impugned order is mere internal shifting and not transfer is no more open to debate and it amounts to transfer on the touch-stone of Section 22-N of Maharashtra Police Act, 2015. Once this aspect is set at rest, the question would come whether it is in compliance of the mandatory requirement of Section 22-N(2) of Maharashtra Police Act, 2015 and the answer is in negative.

19. Material to note that Section 22(I) of Maharashtra Police Act provides for establishment of PEB at Commissionerate level by Notification in the Official Gazette and Section 22(J) of Maharashtra Police Act provides for the functions of PEB. As such, the PEB at Commissionerate level established under Section 22 (I) of Maharashtra Police Act is required to decide transfers, posting and other service related matters of Police Officers upto the rank of Police Inspectors within the Commissionerate. These are the mandatory requirements of law to be followed by the Respondents while considering the transfers of Police Personnel.

20. Admittedly, there is no approval of PEB to the impugned transfer order and Respondent No.2 without routing the matter through PEB usurped the power and passed the impugned order. Therefore, the impugned order is ex-facie illegal and deserves to be set aside.

21. The submission advanced by the learned P.O. that because of the alleged misconduct of the Applicant arising out of incidence dated 24.02.2018, the transfer is necessitated, and therefore, the same is legal is not at all acceptable in legal scenario. True, it appears that grocery shop owner Mr. Samadhan Khodse made complaint against the Applicant attributing demand of bribe to the Applicant and preliminary enquiry was conducted. In such situation also, the proposal of transfer needs approval of PEB and Commissioner of Police alone is

not competent to transfer the Applicant. In fact, it is well settled that the order of transfer if passed in lieu of punishment, then the same is wholly illegal. In the present case, without following due procedure of law of initiation of D.E, the Applicant seems to have been transferred by way of punishment which is contrary to settled legal principles of law. It is more so, when such transfer is not approved by PEB which is Competent Authority in law. This being the position, manifestly the impugned transfer order is in blatant violation of Maharashtra Police Act, 2015 and deserves to be set aside.

22. The necessary corollary of aforesaid discussion leads me to conclude that the Applicant is entitled to the relief claimed and O.A. deserves to be allowed. Hence, the following order.

**ORDER**

- (A) The Original Application is allowed.
- (B) The impugned order dated 06.07.2018 is hereby quashed and set aside.
- (C) The Applicant be reposted in his original post within two weeks from today.
- (D) No order as to costs.

Sd/-

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

Mumbai

Date : 26.03.2019

Dictation taken by :

S.K. Wamanse.