

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

**ORIGINAL APPLICATION NO.718 OF 2018
(Subject : Transfer)**

Shri Dilip Suresh Gavit)
Working as Assistant Commissioner of Police,)
Residing at Bhiwandi West Division,)
Thane.)

....Applicant.

Versus

1. State of Maharashtra,)
Through Additional Chief Secretary,)
Home Department,)
Mantralaya, Mumbai 400 032.)
2. Commissioner of Police,)
Thane City, Near Kalawa Bridge,)
Thane 400 601)
3. Shri Khanderao Appasaheb Dharane,)
Assistant Commissioner of Police,)
Headquarter-2, Thane.)

.....Respondents.

Smt. Punam Mahajan, the learned Advocate for the Applicant.

Ms. S.P. Manchekar, the learned Chief Presenting Officer for the Respondents.

CORAM : JUSTICE SHRI A.H. JOSHI, CHAIRMAN

RESERVED ON : 30.10.2018.

PRONOUNCED ON : 02.11.2018

J U D G M E N T

1. Heard Smt. Punam Mahajan, the learned Advocate for the Applicant and Ms. S.P. Manchekar, the learned Chief Presenting Officer for the Respondents.
2. Facts pleaded by the Applicant as averred in synopsis of the Original Application read as below :-

*“10/8/2017 – Applicant was promoted as Assistant Police Commissioner.
 21/9/2017 – Applicant was given additional charge of Bhivandi West Division.
 3/10/2017 – Applicant was given the regular charge of the post of ACP Bhivandi West Division.
 30/7/2018 – Applicant is transferred from Bhivandi West Division to Head Quarter -2, Thane City. Respondent No.3 is transferred in place of the Applicant.
 30/7/2018 – Applicant submitted the representation to the Respondent No.2, for cancelling the transfer order.”*

(Quoted from synopsis, page A of the paper book of O.A.)

3. Applicant pleads that he is aggrieved by order dated 30.07.2018 by which Applicant has been transferred from his present posting as Assistant Commissioner of Police, Bhiwandi West Division to the post of Assistant Commissioner of Police to Thane City.

4. Applicant’s claim and contention that the transfer order is bad is based on the averments contained in paragraphs 6.17, 6.18.4, 6.18.5, 6.18.6, 6.18.7, 6.18.8 and 6.18.9. These averments are extracted for ready reference as follows :-

“6.17) *The Applicant is also relying on the affidavit in reply filed by the Respondent No.1 in a similar case viz. O.A.No.136/2018 Shri K.V. Patil V/s State of Maharashtra and others. It is stated in para no.3.1 of the affidavit as under :-*

“3.1 It is true that as per the amendment carried out in the Maharashtra Police Act, 1951 the powers of effecting internal transfers of the Officers of the rank of ACP have not been conferred upon the Police Establishment Boards of the Police Commissionerates.”

Copy of the affidavit in reply filed by the Respondent No.1 in a similar case viz. O.A.No.136/2018 Shri K.V. Patil V/s State of Maharashtra is annexed and marked as Annexure A6.

6.18.4) *As per the Affidavit of the Respondent No.1 in O.A.No.136/2018 dated 2/6/2018, the powers of effecting internal transfers of the officers of the rank of ACP have not been conferred upon the Police Establishment Boards of the Police Commissionerate. The impugned order which has been issued after placing the case of the Applicant before the Police Establishment board at the Commissionerate level is totally illegal and bad in law and the impugned order is quashed and set aside on this ground alone.*

6.18.5) *Eventhough the Applicant is transferred within thane City it still amounts to transfer and the Respondent No.2 has not authority in law to issue such a transfer order, exercising the power under Section 22-N(1)(c). Section 22-N(1)(c) is not applicable to the Applicant’s case.*

6.18.6) *The terminology “internal transfer”, “posting” and “appointment” are synonyms and are used to hoodwink the Court and a feeble attempt to escape from the provisions of Section 22-N of the Maharashtra Police Act. Nevertheless the Respondent No.2 is estopped from claiming that it is not a transfer, as the Respondent No.2 has resorted to the provisions the 22-N(1)(c) of the Maharashtra Police Act.*

6.18.7) *Applicant's transfer is midtenure as the normal tenure of 2 years in Bhivandi West Division is not completed. The transfer order is issued in the month of July. Therefore it is both midterm and midtenure. The midtenure and midtenure transfer orders are special transfer orders which can be issued only for the reasons stated in Section 22(N) of the Maharashtra Police Act, 1951. There is not such reason for transfer of the Applicant and the Respondent No.3, therefore the impugned transfer orders are issued in violation of the provisions of Section 22N of the Maharashtra Police Act, 1951.*

6.18.8) *State Government is only the competent authority u/s 22N-1 to issue a midtenure transfer order.*

6.18.9) *The impugned transfer order reveals that the case of the Applicant was placed before Police Establishment Board at the Commissionerate level before issuance of the transfer order. The Police Establishment Board at the Commissionerate level is not the competent authority to issue the transfer order of Assistant Commissioner of Police.*

6.18.15) *The impugned order is arbitrary and malafide as the Applicant's transfer order is issued by the Respondent No.2, after the Respondent No.2 learnt about his transfer on 29/7/2018, as the news of transfer was already circulating in the media.*

(Quoted paragraphs 6.17, 6.18.4, 6.18.5, 6.18.6, 6.18.7, 6.18.8, 6.18.9 and 6.18.15 from page nos.8, 9, 10, 11 and 12 of the paper book of O.A.)

5. Present O.A. is opposed by the Respondents with averments in the reply. Relevant text reads as below :-

"21. With reference to paragraph no.6.17, I say and submit that the contents mentioned in this paragraph are not pertaining to the office of respondent no.2.

25. With reference to paragraph no.6.18.4, I say and submit that in the Affidavit in O.A. no. 136/2018, it is also mentioned as under :

3.3 I say and submit that, as per the provisions of the Rule 22N of the Maharashtra Police (Amended) Act, 2014 and 2015 Hon'ble Home Minister is the competent authority for the transfer of officers of the rank of Assistant Commissioner of Police. While issuing transfer order ACP/Dy. SP as approved by the Hon'ble home Minister, if the officer is posted on a specific post within Commissionerate or for a particular sub-division then such posting can be changed only with the approval of Hon'ble Home minister. However, if the Government has posted the officer only in the particular Commissionerate without a specific assignment then the Commissioner has to give specific assignment to the officer within his Commissionerate. Transfer from one Commissionerate to another Commissionerate is the authority of State Government i.e. Hon'ble Home Minister. The Applicant still continue to be "ACP" – Navi Mumbai" as he is not transferred out of Navi Mumbai Police Commissionerate and there is not violation of order of Government posting him in Navi Mumbai Commissionerate.

26. With reference to paragraph no.6.18.5, I say and submit that the contentions of applicant in this paras is already explained in 6.18.4 and I carve leave to refer and rely on the same.

27. With reference to paragraph no.6.18.6, I say and submit that the contentions of the applicant are not correct as transfer is defined in the Maharashtra Police Act which has specific meaning. Whereas internal posting and appointment, deployment are used to determine posting within same establishment and same are not used to hoodwink the Court as contended.

28. With reference to paragraph no.6.18.7, I say and submit that being midterm and mid tenure transfer special reasons or exceptional circumstances are mandatory to be recorded. It is pertinent to note that eventhough the impugned order is of deployment special reasons were recorded and the same can be safely gathered on perusal of minutes of meeting of Police Establishment Board held on 30/07/2018.

29. With reference to paragraph no.6.18.8, I say and submit that though the Stat Government is the Competent Authority as per Sec 22(N)1 to issue mid-tenure transfer order, the Respondent No.2 is the Competent Authority to deploy officers under him to carry out duties & responsibilities stipulated through Maharashtra Police Act within the Commissionerate in the public interest.

30. With reference to paragraph no.6.18.9., I say and submit that the Applicant is twisting the facts. The Police Establishment Board at Thane Commissionerate level did not contemplate "Transfer" of the Applicant. It rather changed the "Deployment" of the Applicant.

35. With reference to paragraph no.6.18.15, I say and submit that the contents of paragraph are denied in toto. It is submitted that the impugned order is not arbitrary or malafide as alleged.

(Quoted paragraphs 21, 25 to 30 and 35, from page nos.77, 78, 79 and 81 of the paper book of O.A.)

6. Learned Advocate for the Applicant has relied on following judgments :-

Sr. No.	Particulars
1	O.A.No.193/2016, Shri J.J. Jadhav Versus The State of Maharashtra & Ors. interim order dated 24.02.2016.
2	Writ Petition No.3894 of 2016 by Hon'ble High Court in case of State of Maharashtra & Others V/s. Shri J.J. Jadhav and anr. decided on 04.04.2016.
3.	O.A.No.193/2016, Shri J.J. Jadhav Versus The State of Maharashtra & Ors. dated 04.08.2016.
4.	The Supreme Court Cases (2006) 8 SCC, Prakash Singh and Others Versus Union of India and Others. (2006) 8 Supreme Court Cases 1.
5.	O.A.No.555/2016 Shri Rajesh S. Devare Versus The State of Maharashtra & Ors. dated 26.08.2016 (paragraph no.6).
6.	O.A.No.466 and 467 of 2016, Shri A.R. Pawar & Anr. Versus State of Maharashtra & Ors. dated 12.07.2016, page no.6(para no.7), page no.9(para no.9 and page no.11 (para no.11).
7.	O.A.No.897 of 2014 with 904 of 2014 Shri Sudam A. Mandarekar & Ors. Versus The Commissioner of Police & Ors. dated 19.12.2014.

7. Applicant has placed reliance on Section 22N of Maharashtra Police Act, which governs transfer of Police Officers.

8. Text of Section 22N(1) which prescribes as to who shall be the authority, competent to transfer reads as follows :-

“The Competent Authority for the general transfer shall be as follows, namely :-

<i>Police Personnel</i>	<i>Competent Authority</i>
<i>(a) Officers of the Indian Public Service</i>	<i>Chief Minister;</i>
<i>(b) Maharashtra Police Service Officers of and above the rank of Deputy Superintendent of Police.”</i>	<i>Home Minister;</i>

(Quoted from page 1.64 of The Maharashtra Police Act)

9. Sub Section (2) of Section 22N prescribes that the competent authority shall have power to make mid term transfer. Relevant text of sub section 2 reads as follows :-

“(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 :-

<i>Police Personnel</i>	<i>Competent Authority</i>
<i>(a) Officers of the Indian Police Service</i>	<i>Chief Minister;</i>
<i>(b) Maharashtra Police Service Officers of and above the rank of Deputy Superintendent of Police.”</i>	<i>Home Minister;</i>

(Quoted from page 1.65 of The Maharashtra Police Act)

10. Perusal of impugned order discloses that it is shown as issued under Section 22N(1). Section 22N(1) however do not vests in the Commissioner of Police, the power to issue orders of transfer as it is expressly vested in Home Minister.

11. It is seen from the record annexed to the affidavit-in-reply that about three orders of posting are given to the Applicant by Commissioner of Police, Thane City namely order dated 16.08.2017 (copy whereof is at page 86, Exhibit R-2), dated 21.09.2017 (copy whereof is at page 87, Exhibit R-3 of the paper book of O.A.) and order dated 03.10.2017, (copy whereof is at page 88, Exhibit R-4). All these orders reveal that the Applicant was given ‘additional charge’ of the post concerned. Text of these orders referring the nature of posting / additional charge, reads as follows :-

(a) From order dated 16.08.2017 :-

“आदेश

उपरोक्त संदर्भ व विषयान्वये श्री. दिलीप सुरेश गावीत, सहायक पोलीस आयुक्त, सध्या नियंत्रण कक्ष, ठाणे शहर (नियुक्ती प्रतिक्षाधिन्) यांनी पुढील आदेश होईपर्यंत सहायक पोलीस आयुक्त, मुख्यालय - २, ठाणे शहर व सहायक पोलीस आयुक्त, नियंत्रण कक्ष, ठाणे शहर या दोन्ही पदांचा अतिरिक्त कार्यभार पहावा.”

(Quoted from page 86, Exhibit R-2 of paper book of O.A.)

(b) From order dated 21.09.2017 :-

“आदेश

.....
.....
सपोआ मेघराजानी यांचे सेवानिवृत्ती नंतर त्यांचेकडील सहायक पोलीस आयुक्त भिवंडी पश्चिम विभाग या पदाचा अतिरिक्त कार्यभार तात्पुरत्या, स्वरूपात श्री. दिलीप गावीत, सहायक पोलीस आयुक्त (अतिरिक्त कार्यभार सपोआ नियंत्रण कक्ष व सपोआ मुख्यालय-२) हे पाहतील.”

(Quoted from page 87, Exhibit R-3 of paper book of O.A.)

(c) From order dated 03.10.2017 :-

“आदेश

उपरोक्त संदर्भ व विषयान्वये श्री. दिलीप सुरेश गावीत, सहायक पोलीस आयुक्त, (नियुक्ती प्रतिक्षाधिन्) यांचेकडे संदर्भ क्र.२ अन्वये सहायक पोलीस आयुक्त, भिवंडी पश्चिम विभाग या पदाचा अतिरिक्त कार्यभार सोपविण्यांत आलेला आहे. तसेच संदर्भ क्र.९ अन्वये त्यांचे कडे सहायक पोलीस आयुक्त, नियंत्रण कक्ष, ठाणे शहर व सहायक पोलीस आयुक्त, मुख्यालय-२, ठाणे या दोन्ही पदांचा अतिरिक्त कार्यभार सोपविण्यांत आलेला होता.

(I)

संदर्भ क्र.९ अन्वये सपोआ/ गावीत यांचेकडे देण्यात आलेल्या सपोआ नियंत्रण कक्ष, ठाणे व सपोआ मुख्यालय-२ ठाणे या पदांचा अतिरिक्त कार्यभार खालील नमूद सहायक पोलीस आयुक्त यांचेकडे सोपविण्यांत येत आहे. तरी सपोआ/ गावीत यांनी त्यांचेकडे असलेला अतिरिक्त कार्यभार खालील नमूद सहायक पोलीस आयुक्त यांचेकडे सोपवून पूर्तता कार्यभार हस्तांतरण अहवाल इकडील कार्यालयात सादर करावा.”

(Quoted from page 88, Exhibit R-4 of paper book of O.A.)

12. What emerges from record is that though applicant was posted by order 29.07.2018 as ‘Assistant Commissioner of Police, Thane City’, said posting was, in fact the posting made for vesting the Applicant with additional charge and not as a regular posting either by the Government or by Commissioner of Police.

13. It is also evident from the text of the order dated 21.09.2017 by which Applicant was put in charge of Bhiwandi West Division, shows applicant as an officer awaiting posting (नियुक्ती प्रतिक्षाधिन्) and applicant’s posting was done as, Additional charge, “अतिरिक्त कर््याभार” and on temporary basis (अतिरिक्त कर््याभार, तात्पुरत्या स्वरूपात).

14. In both orders dated 16.08.2017 and 03.10.2017 (Exhibit R-2 and R-4) the Applicant’s posting has been described as ‘awaiting posting’ (‘नियुक्ती प्रतिक्षाधिन्’). This term ‘नियुक्ती प्रतिक्षाधिन्’ evident from order dated 16.08.2017 (Exhibit R-2) as well order dated 30.10.2018 (Exhibit R-4) prove that prior to impugned order, at any point of time applicant

was never posted with regular charge or posting as Assistant Commissioner of Police, Bhiwandi West Sub Division.

15. It is for the first time in the impugned order dated 19.07.2018, it is described that applicant is working on the post of Assistant Commissioner of Police, Bhiwandi West Division and the order is styled as the order of transfer without describing or indicating the fact that he was awaiting for transfer. Earlier record as to the fact of actual posting and its nature, if any, is not brought forward by the applicant. Therefore text of orders annexed to reply has to be relied.

16. It is thus proved from record that at no point of time Applicant was ever allotted the particular post upon or consequent whereof applicant would be able to claim that he is 'appointed / posted' by Government on particular place and post, and hence now it is not open for the Commissioner of Police to give him a regular posting which in turn amounts to be a Transfer and that too illegal.

17. In view of the fact that Applicant was not given any specific posting and he was every time shown to be an officer 'awaiting posting', in absence of specific posting by the Government. Therefore, it has to be presumed that the Commissioner of Police was thereby permitted / authorised to effect applicant's posting and the Commissioner of Police has on his own choice kept the applicant awaiting the posting.

18. Therefore now it is not open for the Applicant to urge that Commissioner of Police has to altered applicant's positing from any post which was specifically given to the Applicant by the Government and therefore that said alleged change, alternation amounts to be a Transfer and it is illegal in violation of Section 22N(i) as well as 22N(2) of Maharashtra Police Act 2016.

19. Applicant purports to take advantage of the narration contained in impugned order which describes applicant's posting as Assistant Commissioner of Police in Bhiwandi West Division. In fact record brought before this Tribunal which is referred to in paragraph 11 and other paragraphs shows that applicant was never given regular posting or full-fledged and exclusive charge of the post of Assistant Commissioner of Police of 'Bhiwandi West Division'.

20. In the result the question as to whether the Commissioner of Police has power to transfer the officers in the rank of Assistant Commissioner of Police does not arise for consideration in view of facts which have emerged. Said fact ceases to be a fact in issue, because though pleaded by the applicant and denied by the Respondents, the judgments on facts of present case does not depend on the findings thereon, in view of typical factual position that applicant was never given regular posting as Assistant Commissioner of Police, Bhiwandi West Division.

21. In the present case though Applicant has represented that the said issue arises, the issue which does not arise in view of the facts of the case, and said question need not be decided and is left open for decision in a case where it may eventually arise

22. In the result, it is not necessary to go into effect of the affidavit of the Secretary, Additional Chief Secretary (Home) filed in O.A.No.136 of 2018. The judgment in case of Shri Rajendra M. Todkar Versus The State of Maharashtra & Ors. in O.A.No.609/2015, dated 10.03.2016 as well as judgment in case of Smt. Ujwala S. Ghavte Versus The State of Maharashtra & Ors. in O.A.No.668/2017 dated 17.01.2018, and all other judgments relied upon by applicant do not apply to present in view of peculiar facts of present case which are discussed at length in foregoing paragraphs.

23. In the result, this Tribunal finds that present Original Application has no merit and is dismissed. Parties are directed to bear own costs.

Sd/-

**(A.H. Joshi, J.)
Chairman**

prk