

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.791 OF 2020**

**DISTRICT : PUNE**

Shri Nitin Pandurang Bhoyar, )  
Aged 46 years, Occu.: Deputy Superintendent )  
of Police and R/at : Aurallya, A/304, Pancard )  
Club Road, Baner, Pune. )...**Applicant**

**Versus**

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

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

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

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

**DATE : 12.05.2021**

**JUDGMENT**

1. In this second round of litigation, challenge is to the transfer order dated 10.12.2020 issued by Respondent No.1 – Government thereby transferring the Applicant from the post of Deputy Superintendent of Police, Anti-Corruption Bureau, Pune to Police Inspector, Police Training Centre, Jalna invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. In nutshell, the following are the admitted facts giving rise to this second round of litigation.

(i) The Applicant was serving in the cadre of Police Inspector in Pune City.

(ii) He was promoted to the post of Deputy Superintendent of Police, Anti-Corruption Bureau, Pune fortuitously and his pay was step-up in the cadre of Deputy Superintendent of Police, ACB, Pune. His normal tenure was two years in terms of provisions of Maharashtra Police Act, 1951.

(iii) However, Respondent No.2 – Director General and Inspector General of Police, Maharashtra by order dated 09.01.2020 in view of recommendation of PEB-2 invoking Section 22N(2) of Maharashtra Police Act, 1951 transferred him from Anti-Corruption Bureau to State Intelligence Department.

(iv) The Applicant has challenged the transfer order dated 09.01.2020 by filing O.A. No.60/2020 before this Tribunal *inter-alia* contending that he was transferred mid-term and mid-tenure on default report without approval of competent transferring authority viz. PEB-1.

(v) O.A.60/2020 was heard on merit and decided by order dated 30.06.2020 quashing transfer order dated 09.01.2020 solely on the ground of competency of PEB-2.

(vi) Tribunal in O.A.No.60/2020 has recorded finding that Applicant being fortuitously promoted as Deputy Superintendent of

Police, the competent transferring authority was PEB-1 and approval of Hon'ble Minister was *sine-qua-non* to transfer the Applicant which was not complied with.

(vii) In O.A.No.60/2020, the Tribunal directed to reinstate the Applicant within two weeks from the date of order.

(viii) Respondents did not challenge the decision rendered by the Tribunal in O.A.No.60/2020 and reposted the Applicant on the post of Deputy Superintendent of Police, ACB, Pune.

(ix) After reposting the Applicant, the Respondents again placed the matter before PEB-1 and with the approval of Hon'ble Minister again transferred the Applicant on the post of Police Inspector, Police Training Centre, Jalna by order dated 10.12.2020, which is again challenged by the Applicant in the present O.A.

3. As stated above, O.A.No.60/2020 was allowed mainly on the ground that competent transferring authority was PEB-1 and Hon'ble Minister but the same being not complied with, the transfer order was quashed. The Respondents later rectified the legal defect by placing the matter before PEB-1 and after approval of Hon'ble Home Minister transferred the Applicant. In other words, the legal defect crept-up in earlier transfer order dated 09.01.2020 has been rectified and again Applicant is transferred by impugned order dated 10.12.2020 invoking Section 22N(2) of Maharashtra Police Act. Suffice to say, the ground of competency of transferring authority no more survives.

4. Apart, the perusal of record clearly spells that the matter was considered afresh by PEB-1 and in view of preliminary enquiry report (default report) dated 13.11.2019 recommended the transfer of the Applicant from ACB, since his continuation in ACB found undesirable and unbecoming of public servant. The PEB-1 was headed by Additional Chief Secretary, Home as contemplated under Section 22(C) and 22(D) of Maharashtra Police Act. The minutes of PEB-1 are at Page Nos.1183 to 185 of P.B. Admittedly, recommendation of PEB was approved by

Hon'ble Home Minister being competent authority for the transfer of the Applicant. Section 22N(2) of Maharashtra Police Act empowers competent authority to make mid-term transfer of any Police Personnel in exceptional cases, in public interest and on account of administrative exigencies. As such, invoking Section 22N(2) of Maharashtra Police Act, the Applicant is again transferred with the approval of competent transferring authority.

5. Shri K.R. Jagdale, learned Advocate for the Applicant now again sought to challenge the impugned transfer order contending that the Applicant was transferred on same default report attributing certain misconduct, but before transferring him, no opportunity of hearing was given to the Applicant in terms of Circulars dated 07.10.2016 and 08.11.2017. He further sought to contend that Applicant in his capacity as Deputy Superintendent of Police, ACB had lawfully taken cognizance of the complaint made by Shri Taras and had submitted report to Superintendent of Police, ACB on 01.10.2019 (Page No.132 of P.B.) whereby he sought directions/guidance in the matter. Shri Jagdale, learned Advocate has further pointed out that later in pursuance of direction, he transferred the investigation to Shri Sunil Bile, PSI, ACB, and therefore, there was no reason, much less legal and valid, to transfer the Applicant from ACB. According to him, one Shri Aspat, Police Inspector, Anti-Extortion Unit, Pimpri-Chinchwad was involved in the matter, but to save Shri Aspat, the Respondents made Applicant scapegoat and transferred the Applicant from ACB to Police Training Centre, Jalna unceremoniously attributing misconduct to him. On this line of submission, he submits that impugned transfer order dated 10.12.2020 is *malafide* and unsustainable in law.

6. Per contra, Smt. K.S. Gaikwad, learned Presenting Officer submits that legal defect cropped-up while transferring the Applicant by initial transfer order dated 09.01.2020 has been rectified and matter was considered afresh by PEB-1 and with the approval of Hon'ble Home

Minister, the Applicant has been transferred having found that Applicant's continuation in ACB was not desirable from the point of probity and public interest. She has further pointed out that Tribunal in first round of litigation i.e. in O.A.No.60.2020 has already considered the issue of preliminary enquiry report and necessity of the Applicant to transfer from ACB and has turned down the contention raised by Applicant that transfer was *malafide*. O.A.No.60/2020 was allowed solely on the ground that there was no approval of PEB-1 and Hon'ble Home Minister. However, now since the said legal defect is rectified, the impugned transfer order now cannot be questioned and O.A. is devoid of merit.

7. At this juncture, it would be apposite to reproduce Para Nos.27 to 33 of Judgment of O.A.No.60/2020, which are as follows :-

**“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 17 O.A.60/2020 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 18 O.A.60/2020 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 19 O.A.60/2020 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.”

8. As such, the issue of preliminary enquiry report and necessity of the Applicant to transfer the Applicant from ACB has been already considered by the Tribunal accepting Respondents’ contention that Applicant’s transfer was in public interest.

9. Since the same issue is now again raised in this O.A, I would like to deal with the same in some details. In this behalf, the perusal of record reveals that while Applicant was serving as Deputy Superintendent of Police, ACB, Shri Rajesh Bansode, Deputy Superintendent of Police, ACB was directed to make preliminary enquiry in the matter of complaints lodged by one Shri Rajesh M. Taras on 04.09.2019 and 23.09.2019. It was transpired that Applicant had friendly relations with Shri Taras and only to favour Shri Taras, the Applicant misused his position as Deputy Superintendent of Police by interfering in private monetary dispute between Shri Taras and Shri Vijay Date. Shri Rajesh Bansode accordingly submitted preliminary enquiry report on 30.11.2019 to Director General, ACB (Page Nos.176 to 181 of P.B.). The conclusion recorded by him is as follows :-

**“एकंदरीत पडताळणी प्रकरण व चौकशी अधिकारी यांचा अहवाल पाहता खालील बाबी निष्पन्न झाल्या आहेत.**

- अॅन्टी करप्शन ब्युरोकडे दिनांक २३/८/२०१९ रोजी तक्रारदार श्री तरस यांनी दिलेल्या तक्रारीमध्ये लोकसेवक पो.उ.नि. कदम यांनी तक्रारदाराकडे लाचेची मागणी केल्याचे नमूद नाही.
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- तक्रारदारकडे मागितलेली रक्कम ही चिटफंड व्यवहारातील व्यवहारातील तक्रारदार व खाजगी इसम यांचे आपसातील खाजगी व्यवहाराची व समझोत्याची रक्कम असल्याचे दिसून आले आहे.
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- तक्रारदार श्री राजेश मारुती तरस यांचेविरुद्ध खालील प्रमाणे गुन्हे दाखल आहेत.
  १. चिंचवड पो.स्टे. गु.र.नं. २२७/२०१४ भा.द.वि. क. ४३८, ४२०, १२०(ब), ५०६, ३४ - न्यायप्रविष्ट
  २. चिंचवड पो.स्टे. गु.र.नं. २२७/२०१५ भा.द.वि. क. ४०६, ४२० व ३४ न्यायप्रविष्ट
  ३. पिंपरी कोर्ट येथे निगोशिअबल इन्स्ट्रुमेंट अॅक्ट प्रमाणे तसेच स्पेसिफिक रिलीफ अॅक्ट प्रमाणे सन २००५ ते सन २०१५ च्या दरम्यान ८ केसेस दाखल होत्या त्यांची निर्गती आलेली आहे.
- तक्रारदार श्री राजेश मारुती तरस यांचे भाऊ श्री महेश मारुती तरस यांचेविरुद्ध चिंचवड पोलीस ठाण्यात गु.र.नं. २६५/२०१९ भा.द.वि. कलम ४०६, ४२० प्रमाणे गुन्हा दाखल आहे. (फिर्यादी श्री विजय सोमनाथ दाते)
- तक्रारदार राजेश तरस हू देहुरोड पो. स्टे. हद्दीत किवळ येथे जुगाराचा क्लब चालवित असल्याचे समजून आले आहे.
- तक्रारदार श्री तरस व पोलिस उपअधीक्षक श्री. नितीन भोयर यांची मैत्री असल्याचे समजून आले आहे.
- खंडणी विरोधी पथकाकडे दिलेला अर्ज हा खाजगी व्यवहाराचा आहे. त्यातील रेकॉर्ड झालेले संभाषण हे खाजगी व्यवहाराचे दिसून येते. पडताळणीमध्ये पो.नि. श्री अस्पत यांनी लाचेची मागणी केलेली नसून ती खाजगी व्यवहारातील रक्कम परत करण्याबाबत दिसून येते.
- असे जरी असले तरी पो. नि. अस्पत, यांनी त्यांचेकडील अर्ज चौकशीमध्ये योग्य ती कायदेशीर कारवाई करणे गरजेचे होते किंवा दिवाणी बाब असल्यास त्यांनी तशी संबंधितांना समज देणे गरजेचे होते.
- पो.नि. अस्पत यांनी त्यांचे अधिकार कक्षेबाहेर जावून सदर प्रकरण मिटविण्याचा प्रयत्न केल्याचे दिसून येते.
- याकरिता पो.नि. अस्पत यांच्या या कसूरी बाबत मा. पोलीस महासंचालक, महाराष्ट्र राज्य, मुंबई यांना लिहून जाणेस विनंती आहे.
- संबंधितांच्या खाजगी रोख रक्कमेच्या संबंधाने आयकर खात्यास कळविणे उचित होईल. तसेच चिट फंडच्या गैरव्यवहारासंबंधाने रजिस्ट्रार चिटफंड कार्यालय कळविणे उचित होईल.
- सदरचे पडताळणी प्रकरण अन्य अधिका-याकडे चौकशीकामी वर्ग करण्यास सांगितले असता चौकशी वर्ग न करता निष्कर्ष काढून श्री नितीन भोयर, पोलीस उपअधीक्षक यांनी अहवाल सादर केलेला आहे. त्यांची ही कृती संशयास्पद वाटते.

**निष्कर्ष:-**

- १) एकंदरीत पाहता तक्रारदार राजेश तरस यांनी ला.प्र. विभागाकडे दिलेली तक्रार ही त्यांचे मधील खाजगी चिट फंडच्या व्यवहारातील असून लाचेची संबंधीत नाही. त्याने संबंधितांना देणे असलेली रक्कम द्यावयास लागू नये यासाठी लाचलुचपत प्रतिबंधक विभागाचा दुरुपयोग तसेच दबाब तंत्र म्हणून वापर केल्याचे दिसून आले आहे.
- २) पोलीस उपअधीक्षक श्री नितीन भोयर, यांनी अशा गुन्हेगारी पार्श्वभूमी असलेल्या व्यक्तीशी संबंध ठेवलेले आहेत व त्याला मदत करण्यासाठी ला.प्र.विभागाचा गैरवापर केला आहे.
- ३) अशाप्रकारे खाजगी व्यवहाराला लाचेच्या मागणीचे स्वरूप देऊन पोलिस उपअधीक्षक नितीन भोयर यांनी गैरवर्तन केल्याचे स्पष्ट दिसून येत आहे. तसेच लाचलुचपत प्रतिबंधक विभागाचा गैरवापर केलेला असल्याने त्यांची बदली लाचलुचपत प्रतिबंधक विभागाच्या बाहेर अकार्यकारी पदावर करणे उचित होईल, त्यासाठी शिफारस आहे.”



10. On receipt of said Report, Director General (Anti-Corruption Bureau) by his letter dated 19.12.2019 recommended Director General of Police, State of Maharashtra to transfer the Applicant (Letter of Director General, ACB dated 19.12.2019 is at Page No.183 of P.B.).

11. Accordingly, matter was placed before PEB-1 headed by Additional Chief Secretary, Home by circulation. The PEB-1 was consists of 5 Members which are as follows :-

- 1) Shri Sitaram Kunte - Additional Chief Secretary, Home
- 2) Shri S.K. Jaiswal - Director General of Police, State of Mah.
- 3) Shri Parambir Singh - Commissioner of Police, Mumbai
- 4) Shri Rajnish Seth - Director General, Anti-Corruption Bureau, Maharashtra State
- 5) Shri Kulwant Sarangal - Additional Director General of Police (Estt.), Maharashtra State.

Accordingly, PEB-1 discussed and elaborated the issue and recorded the minutes (Page No.185 of P.B.), which are as under :-

“(अ) वरील सदरहु तक्रारीच्या अनुषंगाने दि. २५/८/२०१९, २७/८/२०१९, ३०/८/२०१९ व ४/९/२०१९ रोजी श्री. नितीन भोयर, पो. उप अधीक्षक, ला. प्र. वि. पुणे यांनी पैशाची मागणी संदर्भात पडताळणी केली असता सदर पडताळणीमध्ये काहीही आक्षेपार्ह संभाषण नसताना देखील श्री. भोयर हे या प्रकरणात मुद्दाम पाठपुरावा करीत राहिले.

(ब) श्री. राजेश तरच व श्री. महेश तरस ह्यांचे वर्तन गुन्हेगारी स्वरूपाचे असून त्यांच्यावर यापूर्वीसुद्धा फसवणुकीचे गुन्हे आहेत. श्री. नितीन भोयर यांनी माहिती असूनही गुन्हेगारी पार्श्वभूमी असलेल्या राजेश तरस यांचेशी संबंध ठेवून त्यांचा खाजगी आर्थिक व्यवहारामध्ये हस्तक्षेप करण्यासाठी ला.प्र.वि. चा गैरवापर केला.

(क) प्रस्तुत प्रकरणी सदरचे पडताळणी प्रकरण अन्य अधिका-याकडे चौकशीकामी वर्ग करण्यास (एटप) यांना वर्ग करण्यास सांगितले असता, त्यांनी तसे न करता स्वतः त्यामध्ये चौकशी श्री भोयर यांनी करणे ही बाब व या प्रकरणातील श्री. नितीन भोयर, (एटप) पो. उपअधीक्षक ला.प्र.वि., पुणे यांची सचोटी संशयास्पद असून त्यांनी पदाचा गैरवापर करून गुन्हेगारी पार्श्वभूमी असलेल्या श्री. राजेश तरस त्यांना मदत करून राजेश तरस यांच्या खाजगी आर्थिक व्यवहाराला लाचेच्या मागणीचे स्वरूप देऊन गैरशिस्त वर्तन केले. श्री तरस व (एटप) पोलिस उपअधीक्षक श्री. नितीन भोयर यांची मैत्री असल्याचे समजून आले. अशा गुन्हेगारी पार्श्वभूमी असलेल्या व्यक्तीशी श्री. भोयर यांनी संबंध ठेवलेले व त्यास मदत करण्यासाठी त्यांच्या ला.प्र.वि. पुणे येथील पदाचा गैरवापर केल्याचे निष्पन्न झाले. म्हणून अशा अधिका-याची यापुढे ला.प्र.वि. मध्ये सेवा चालू ठेवणे योग्य नसल्याने श्री. नितीन भोयर यांची अपवादात्मक परिस्थितीत लाचलुचपत प्रतिबंधक विभागाबाहेर त्वरीत बदली होण्यास विनंती महासंचालक ला.प्र.वि.म.रा., मुंबई यांनी पोलिस महासंचालक म.रा. मुंबई यांना केली आहे.

०२. महाराष्ट्र पोलीस कायदा-१९५१, मधील कलम २२सी, २२डी भा.पो.से. व रा.पो.से पोलिस अधिका-यांच्या नेमणुका व बदल्या करण्यासाठी या अधिनियमातील कलम २२ एन सह २२ एन (२) नुसार मुदतपूर्व बदली करण्यासाठी शिफारस करण्याचे कर्तव्य पोलिस आस्थापना मंडळ क्रमांक-१ यांना प्रदान करण्यात आले आहे. त्यानुसार वरील नमूद केलेल्या वस्तुस्थितीचा तसेच (एटप) पोलीस उप अधीक्षक नितीन पांडुरंग भोईर सध्या नेमणूक ला.प्र.वि. पुणे यांच्या बाबतीतील यासोबत जोडलेल्या बायोडाटाचे देखील काळजीपूर्वक छाननीअंती, (एटप) पोलीस उप अधीक्षक (मुळ पद पोलीस निरीक्षक) यांची ला.प्र.वि. पुणे येथून त्यांच्या मूळ पदावर म्हणजे पोलीस निरीक्षक या पदावर मुदतपूर्व बदली चे श्रंसदं या टिकाणी ही महाराष्ट्र पोलीस अधिनियम, १९५१ मधील कलम २२ एन (२) नुसार त्वरेने करण्याची दृढ शिफारस महाराष्ट्र पोलीस अधिनियम, १९५१ मधील कलम २२ एन (२) खाली नमूद स्पष्टीकरणातील नोंद (ब) नुसार अशी बदली करण्यास सक्षम प्राधिकारी म्हणजे मा. गृह मंत्री यांना एक मताने पोलिस आस्थापना मंडळ क्रमांक १ याद्वारे करीत आहे.”

12. Thus, PEB-1 unanimously recommended the transfer of the Applicant invoking Section 22N(2) of Maharashtra Police Act with specific findings that continuation of the Applicant in ACB was undesirable rather it was harmful to the Department and recommended Hon'ble Home Minister to approve the transfer of the Applicant to Police Training Centre, Jalna who admittedly approved the minutes. The learned P.O. has also tendered file noting to show the approval accorded by Hon'ble Home Minister.

13. Thus, the perusal of minutes of PEB clearly spells that PEB-1 was satisfied with the preliminary enquiry report and there was *prima-facie* material attributing certain misconduct to the Applicant and on the basis of it, he was transferred. Where the competent authority on the basis of preliminary enquiry report satisfied about the existence of reasons to transfer the Applicant, such satisfaction of PEB can hardly be questioned unless it is shown tainted with *malafides*. In the present case, no such malice can be possibly attributed to the Respondents. Needless to mention that existence of reasons is a matter capable of objective verification, whereas satisfaction as to reason is a matter of subjective satisfaction. Once the test of existence is satisfied, the subjectivity of satisfaction cannot be gone into by the Tribunal unless it is a case of *malafide* exercise of power and Tribunal cannot substitute its opinion for that of competent authority.

14. It is well settled that a matter of transfer of Government servant, whether there was any misconduct is a question which can be gone into in departmental proceedings and for the purpose of effecting transfer, the question of holding elaborate enquiry with opportunity of hearing to the concerned Government servant to find out whether there was misconduct is unnecessary and what is required is the *prima-facie* satisfaction of the competent authority about the alleged misconduct or lapses on the part of concerned Government servant.

15. In the present case, the competent authority has formed the opinion that the Applicant has unnecessarily investigated private financial dispute which was in between Shri Taras and Shri Date but only to favour Shri Taras, the Applicant interfered in the said matter and misused his position in ACB. In other words, Applicant's continuation in ACB was found undesirable rather objectionable, and therefore, to maintain probity in the administration as well as to maintain the image of Department, the transfer of the Applicant was found inevitable, which can hardly be questioned in judicial review.

16. Needless to mention it is always for the executive to consider whether Government servant is required to be transferred from the point of administrative exigency or public interest and Tribunal should not interfere therein unless *malafides* are established. In the present case, no such *malafides* can be attributed to the Respondents.

17. Insofar as Circulars dated 07.10.2016 and 18.11.2017 are concerned, those are instructions issued by the Office of Director General of Police stating that Police Personnel should not be transferred solely on the basis of complaint without making preliminary enquiry of the alleged misconduct. It *inter-alia* further provides for recording statement of the concerned Police Personnel in preliminary enquiry. True, in the present matter, no opportunity of hearing seems to have been given to the Applicant in preliminary enquiry. However, in my considered opinion, that itself would not render transfer order illegal in view of detailed preliminary enquiry report which has been accepted by PEB-1 as well as by Hon'ble Home Minister. The notice of opportunity of hearing is required to be given where there is complaint of misconduct against Police Personnel from public, so that Police Personnel are not harassed by frivolous complaints. Whereas in the present case, the ACB itself has taken cognizance of misadventure of the Applicant and Shri Rajesh Bansode has submitted detailed preliminary enquiry report. As such, considering the facts and circumstances of the matter, the absence of

opportunity of hearing to the Applicant in preliminary enquiry *ipso-facto* would not render the transfer order illegal. Indeed, while deciding O.A.No.60.2020, this Tribunal has categorically held that the aspect of non-opportunity of hearing pales into insignificance in view of decision of Hon'ble Supreme Court in **Janardhan Debanath's** case (cited supra). The Hon'ble Supreme Court held that the question whether a Government servant could be transferred to a different Department is as matter for the employer to consider depending upon the administrative necessities and the extent of solution for the problems faced by the administrative and it is not for the Tribunal or Court to direct one way or the other and holding of elaborate enquiry with opportunity of hearing to the concerned Government servant should not be insisted upon, otherwise very purpose of transferring a Government servant in public interest or exigency or exigencies of administrative to enforce decorum and ensure probity could get frustrated.

18. The necessary corollary of aforesaid discussion leads me to conclude that the challenge to the impugned transfer order dated 10.12.2020 holds no water and O.A. deserves to be dismissed. Hence, I pass the following order.

### **ORDER**

The Original Application stands dismissed with no order as to costs.

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

Mumbai  
Date : 12.05.2021  
Dictation taken by :  
S.K. Wamanse.

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