

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**ORIGINAL APPLICATION NO.828 OF 2019
WITH
ORIGINAL APPLICATION NO.847 OF 2019
With
ORIGINAL APPLICATION NO.848 OF 2019
With
ORIGINAL APPLICATION NO.849 OF 2019**

DISTRICT : PUNE

ORIGINAL APPLICATION NO.828 OF 2019

1. Shri Chetan D. Mundhe,)
Age : 35 years, working as Police Naik)
R/at Bhimashankar Colony Varale,)
Talegaon Dabhade, Tal.Maval, Dist. Pune.)...**Applicants**

Versus

1. The State of Maharashtra, through)
Additional Chief Secretary,)
Home Dept.O/at. Mantralaya,)
Mumbai 400 032.)
2. Commissioner of Police, Pimpri-)
Chinchwad Police Commissionerate,)
O/at Chinchwad, Pune 33.)...**Respondents**

WITH

ORIGINAL APPLICATION NO.847 OF 2019

- Shri Dinkar Parshuram Bhujbal,)
Age : 41 years, working as Police Naik)
R/at Bhujbal Wasti, Wadad, Pune.)...**Applicants**

Versus

1. The State of Maharashtra, through)
Additional Chief Secretary,)
Home Dept.O/at. Mantralaya,)
Mumbai 400 032.)
2. Commissioner of Police, Pimpri-)
Chinchwad Police Commissionerate,)
O/at Chinchwad, Pune 33.)...**Respondents**

WITH**ORIGINAL APPLICATION NO.848 OF 2019**

Shri Prasad Rajanna Jangilwad)
Age : 36 years, working as Police)
Constable, R/at Kaveri Nagar Police)
Line, Wadad, Pune.)...**Applicants**

Versus

1. The State of Maharashtra, through)
Additional Chief Secretary,)
Home Dept.O/at. Mantralaya,)
Mumbai 400 032.)
2. Commissioner of Police, Pimpri-)
Chinchwad Police Commissionerate,)
O/at Chinchwad, Pune 33.)...**Respondents**

WITH**ORIGINAL APPLICATION NO.849 OF 2019**

Shri Pradeep Chhabu Shelar)
Age : 39 years, working as Police Head)
Constable, R/at Yash Park App, Flat No.)
102, Shivraj Nagar, Kalewadi, Lane No.2,)
Pune – 411017.)...**Applicants**

Versus

1. The State of Maharashtra, through)
Additional Chief Secretary,)
Home Dept.O/at. Mantralaya,)
Mumbai 400 032.)
2. Commissioner of Police, Pimpri-)
Chinchwad Police Commissionerate,)
O/at Chinchwad, Pune 33.)...**Respondents**

Smt. Punam Mahajan, Advocate for Applicants.

Shri A. J. Chougule, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 06.12.2019

JUDGMENT

1. Since challenge to the impugned order of transfers is arising from common order and grounds these Original Applications are decided by common Judgment.

2. Shortly stated facts are as follows:-

Applicant in O.A.No.828/2019 was posted at Crime Branch Unit No.2 Pimpri-Chinchwad and joined there on 11.10.2018. Whereas, Applicants in Original Applications Nos.847/19, 848/19 and 849/19 were posted at Anti Narcotics Cell, Pimpri-Chinchwad by order dated 02.11.2018 and 09.11.2018. They have completed hardly 8-9 months at the time of impugned transfer orders. The Applicant in O.A.No.828/2019 was transferred to Headquarter by order dated 10.07.2019. Whereas, the Applicants in remaining Original Applications were transferred to Headquarter by order dated 24.06.2019. The Applicants have, therefore challenged the impugned transfer orders on the ground that they are transferred mid-term and mid-tenure without there being any administrative exigencies or any other reason for their mid-term transfer.

3. Smt. Punam Mahajan, learned Counsel for the Applicants sought to assail the impugned transfer orders on following ground:-

- (a) Transfers are mid-term and mid-tenure.
- (b) No cases made out for mid-term and mid-tenure transfer in the teeth of Section 22N(2) of Maharashtra Police Act.
- (c) Constitution of Police Establishment Board (PEB) at Commissionerate level which recommended the transfer of the Applicants is not in consonance with Section 22N of Maharashtra Police Act.

4. Learned Counsel for the Applicants has further pointed out that the present O.As deserve to be allowed in view of the decision rendered by this Tribunal in O.A.No.747/19 & 748/19, decided on 02.12.2019 which are arising from same transfer orders dated 24.06.2019 and 10.07.2019 on similar grounds.

5. Per contra, Shri A. J. Chougule, learned P.O. for the Respondents sought to justify the impugned transfer orders contending that earlier postings of the Applicants given to them in Crime Branch Unit and Anti Narcotics Cell was transitional, and therefore, they were required to be transferred in reshuffle of the posting of the police personnel. He further submits that the PEB at Commissionerate level, Pimpri-Chinchwad approved the transfers of the Applicants amongst other police personnel. As such, learned P.O. sought to justify the impugned transfer orders on the ground of administrative exigencies.

6. Undisputedly, the Applicants have hardly completed 8-9 months tenure at their present posting in Crime Branch Unit and Anti Narcotics Cell, Pimpri-Chinchwad and they were not due for transfer having not completed normal tenure of five years as provided in Maharashtra Police Act. Therefore, question comes whether the

impugned transfers are sustainable in law in the teeth of Section 22N(2) of Maharashtra Police Act which seems to have invoked by the Respondents while transferring the Applicants.

7. At this juncture, it would be apposite to refer Section 22N(2) of Maharashtra Police Act which provides for mid-term and mid-tenure transfer in exceptional cases, in public interest and on account of administrative exigencies, which is as follows :-

“22N(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.

8. As such, in the present case, the Competent Authority is Police Establishment Board constituted at Commissionerate level as contemplated u/s 22-I of Maharashtra Police Act, which is as follows:-

“22-I. Police Establishment Board at Commissionerate Level.

- (1) The State Government shall, by notification in the Official Gazette, constitute for the purposes of this Act, a Board to be called the Police Establishment Board at Commissionerate Level.
- (2) The Police Establishment Board at Commissionerate Level shall consist of the following members, namely:-
 - (a) Commissioner of PoliceChairperson;
 - (b) Two senior-most officers in the Rank of Joint Commissioner or Additional Commissioner or Deputy Commissioner of Police.Member;
 - (c) Deputy Commissioner of Police (Head Quarter)Member Secretary

Provided that, if none of the aforesaid members is from Backward Class, then the State Government shall appoint an additional member of the rank of the Deputy Commissioner of Police belonging to such Class.”

9. Now turning to the facts of the present case, the perusal of Minutes of PEB dated 24.06.2019 and 10.07.2019 reveals that the said PEB was consist of three members namely Police Commissioner, Pimpri-Chinchwad, Additional Police Commissioner, Pimpri-Chinchwad and Deputy Commissioner of Police, Pimpri-Chinchwad. As such it was consist of three members only including Chairperson. Whereas, as per Section 22-I(2), the PEB shall consist of Chairperson, two senior most officers in the rank of Additional Commissioner and Member Secretary from the rank of Deputy Commissioner of Police, Headquarter. Thus, in law, it should consist of total four Members. Whereas in the present case, the PEB which recommended the Applicants transfer are consist of three members. Needless to mention that where the law provides for constitution of PEB in particular manner then it has to be done in the manner prescribed and there cannot be any latitude. This being the position, there is no escape from the conclusion that constitution of PEB is not in terms of Section 22-I of Maharashtra Police Act. This is one of the major legal defects in the constitution of PEB.

10. Furthermore, the law requires that one of the members of PEB must be from Backward Class. As per proviso of Section 22-I, if none of the Member from PEB from Backward Class then the State Government is required to appoint additional member of the rank of the Deputy Commissioner of Police belonging to Backward Class. However, in the present case, there is no compliance of Section 22-I to establish that one of the members of PEB belongs to Backward Class.

11. Apart there is no compliance of Section 22-I of Maharashtra Police Act which inter-alia mandates that PEB shall be notified in the Official Gazette. In the present case, no such Notification of constitution of PEB in the Official Gazette is forthcoming.

12. Suffice to say that there are vital legal defects in the constitution of PEB which purportedly recommended the transfer of the Applicants. Needless to mention that recommendation and transfer made by such PEB which is not in accordance to law are not sustainable in law and on this ground itself, impugned transfer orders are required to be quashed.

13. Even assuming for a moment that absence of member of Backward community in PEB and absence of Notification in Official Gazette does not render the decision of PEB, illegal, in that event also, in view of non-speaking and vague minutes of PEB, the impugned transfer orders are unsustainable in law.

14. The PEB in its Minutes dated 24.06.2019 transferred 305 police personnel and again in Minutes dated 10.07.2019 transferred 74 police personnel. As such, in all 379 police personnel were transferred. All that PEB recorded in the Minutes as follows :-

“आस्थापना मंडळाचे असे मत पडले आहे की, नव्याने सुरुवात करण्यात आलेल्या चौक्यांना मनुष्यबळ पुरवणेबाबत चर्चा करण्यात आली. पोलीस स्टेशन मध्ये व मुख्यालयास कामाची व्याप्ती पाहून मनुष्यबळ पुरविणेबाबत चर्चा करण्यात आली. पोलीस कर्मचारी यांच्या विनंती वरून प्रशासकीय कारणास्तव बदल करणे आवश्यक आहे. काही पोलीस कर्मचारी यांचे गुन्हे प्रकटीकरण व प्रतिबंधाचे अनुषंगाने कामगिरी अत्यंत असमाधानकारक आहे. कर्मचारी यांचे कामगिरी व कर्तव्यामध्ये सुधारणा करणे बाबत वारंवार सुचना दिल्या व प्रत्येक आठवडयामध्ये आढावा घेतला असता, त्यांचेमध्ये काही एक बदल झालेला नाही असे कर्मचारी, तसेच पोलीस आयुक्तीलय पिंपरी चिंचवड नव्याने झाले असल्याने जेथे कर्मचारी कमी जास्त आहेत त्याप्रमाणे प्रशासकीय कारणास्तव त्यांचा आढावा घेवून बदल्याकरण्यात येत आहे.”

15. In minutes, reproduced above, the PEB recommended the transfer of some of the employees on administrative ground and in respect of some of the employees; the transfers were affected because of alleged non performance in duties. Except these two reasons, vaguely mentioned in minutes, no other details viz-a-viz present Applicants are forthcoming. When such large number of police personnel are transferred, it is accepted to make it GroupWise to specify under which caption i.e. administrative exigencies or inefficiency, they fall. The PEB was required to examine the case of

each and every person under transfer and to satisfy itself that that really there exists special case or administrative ground for such transfer. From Minutes of PEB, it cannot be gathered as to which employee has been transferred on which particular ground. Suffice to say, the Minutes recorded by PEB are too vague and does not satisfy the requirement of Section 22N(2) of Maharashtra Police Act.

16. Needless to mention that while transferring police personnel mid-term or mid-tenure, the PEB needs to record its reasons that on account of administrative exigency or in public interest, special case is made out for transfer. As such, there has to be reasons to satisfy the rigor of Section 22N(2) of Maharashtra Police Act. It is not mere formality. However, in the present case, in one stroke all 379 police personnel including the Applicants were transferred without examining the case of each person. In this behalf, it would be apposite to refer the decision of the Hon'ble High Court in W.P. No.8437/2017 wherein in similar situation the Hon'ble High Court maintained the order passed by the Tribunal quashing transfer orders. It was also the case of transfer of 70 police personnel without recording any specific reason so as to make out a special case for transfer under section 22N(2) of Maharashtra Police Act. Para No.8 of the judgment is important which is as follows:-

“8. In the present case, both the Respondents are Officers of the rank of Police Inspector and therefore as per Explanation to sub-section(2) of Section 22N of the said Act, the said Board is the Competent Authority. Therefore, to that extent, the learned AGP was right in offering criticism in relation to finding of the Tribunal that the power under sub-section (2) ought to have been examined by the State Government and not by the Competent Authority. However, there is a specific finding recorded by the Tribunal about the decision making process adopted by the said Board. To avoid any controversy, we called upon the learned AGP to produce copies of the relevant Minutes of Meeting of the said Board. Accordingly, the learned AGP has produced for perusal of the Court Minutes of the Meeting of the said Board held on 24th May, 2016. The Minutes bear signatures of six out of seven members of the said Board. The Title of the Minutes

is “Transfers on the basis of adverse reports”. The Minutes contain names of large number of Officers (about 70), their present posting and their proposed postings. The Minutes do not record that the cases of the Officers named therein are exceptional cases or that the cases of the said Officers fall in the category covered by sub-section (2) of Section 22N in the sense that their cases are exceptional and therefore in public interest and on account of administrative exigencies, the Competent Authority has recommended transfers. In fact, in the Minutes, except the names of the officers, their place of original postings and place of proposed postings, nothing has been mentioned. We are conscious of the fact that it was not necessary for the Board to record elaborate reasons about each and every candidate. However, the Minutes do not show application of mind. The Minutes do not record satisfaction of the members of the Board that the cases of 70 Officers mentioned in the Minutes are exceptional cases inasmuch mid-term transfer were warranted in public interest and on account of administrative exigencies. There is nothing placed on record to show that any such satisfaction about the existence of the facts specified in sub-section (2) of Section 22N has been recorded by the said Board. Recording of such satisfaction is a condition precedent for passing a valid order of transfer under sub-section (2) of Section 22N of the said Act. Sub-section (2) is an exception to Sub-Section (1) which permits transfer only on the completion of the prescribed tenure.”

17. As such, the ratio of the Judgment of Hon’ble High Court referred to above is squarely applicable to the present facts and there is no compliance of Section 22N(2) of Maharashtra Police Act in letter and spirit. In one stroke, 379 Police personnel were transferred without discussing as to whose transfer is necessitated on account of administrative exigency as an exceptional case. In absence of any such data or reasons, the transfers are not sustainable in law, it being made in generalized manner. Suffice to say, on this count also, the impugned transfer orders are unsustainable in law.

18. As stated earlier, these Original Applications are arising from common transfer order which was subject matter of O.A.No.747 & 748/2019 wherein on the above grounds, impugned transfer orders were quashed. I see no reason to deviate from the findings and

observations in O.A.747/2019 & O.A.748/2019. Present Original Applications deserve to be allowed on similar line.

19. The totality of aforesaid reasons leads me to sum-up that the impugned transfer orders are not sustainable in law and deserve to be quashed. Hence, the following order.

ORDER

- (A) All these Original Applications are allowed.
- (B) Impugned transfer orders dated 24.06.2019 and 10.07.2019 qua the Applicant, are 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