

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.861 OF 2018**

**DISTRICT : MUMBAI**

Shri Rajendrakumar V. Trivedi. )  
Assistant Commissioner of Police, )  
Aged about 55 years, and Residing at )  
1602, Lodha Aria, Ram Tekdi, T.J. Road, )  
Sewri, Mumbai-400 015. )...**Applicant**

**Versus**

1. Government of Maharashtra, )  
Through Additional Chief Secretary, )  
Home Dept., Mantralaya, Mumbai-32. )
2. Director General of Police, )  
Maharashtra State, having its office at )  
Old Council Hall, Colaba, Mumbai. )
3. Commissioner of Police, Mumbai, )  
having its office at Crawford Market, )  
Fort, Mumbai. )
4. Shri Sharad Mahabaleshwar Naik, )  
Assistant Commissioner of Police, )  
Sion Division and residing at )  
C.G.S Colony, Sector 7, Building No.99, )  
Antop hill, Mumbai. )...**Respondents**

**Mr. M.D. Lonkar, Advocate for Applicant.**

**Ms. S.P. Manchekar, Chief Presenting Officer for Respondents.**

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

**DATE : 28.11.2018**

**JUDGMENT**

1. In the present Original Application, the Applicant has challenged his order or transfer dated 07.08.2018 issued by Respondent No.3 as well as order dated

16.08.2018 whereby *ex-post facto* sanction was accorded by Respondent No.1 to the order dated 07.08.2018.

2. Shortly stated facts giving rise to this application are as follow.

3. The Applicant was initially appointed as Police Sub Inspector through competitive examination conducted by Maharashtra Public Service Commission (MPSC) on 15.06.1987. During the coruse of his career, he has been promoted to the post of Assistant Commissioner of Police (ACP). At the time of impugned transfer order, he was working as ACP, Sion, Mumbai. Prior to his posting at Sion, Mumbai while he was working at Sewri Police Station, Mumbai, he had observed certain illegalities and irregularities at the hands of higher Police Officials. Therefore, he had submitted report / representation dated 03.11.2015 to Respondent No.3 (Commissioner of Police, Mumbai) for appropriate action. He contends that, instead of taking appropriate action on his representation, the Respondent No.3 transferred him by order dated 06.02.2016 from Sewri Police Station to Armed Police Force. Thereafter again, he made representation dated 04.10.2016 to Respondent No.3 about the injustice caused to him. Later, the Respondent No.3 by communication dated 15.10.2016 directed Joint Commissioner of Police to conduct separate enquiry with reference to complaint / representation made by the Applicant. Accordingly, the Joint Commissioner of Police enquired into the matter and found substance in the complaint made by the Applicant and according submitted report dated 24.08.2017. In the meantime, by order dated 29.06.2017, the Applicant came to be promoted as Assistant Commissioner of Police and was initially posted at EOW. Later, by order dated 16.08.2017, he came to be posted as Assistant Commissioner of Police – 6, Sales Tax with additional charge of the post of C.B. Control. Again after two days, by order dated 18.08.2017, he was posted at C.B. Control with additional charge of Sales Tax. Subsequently, by order dated 01.12.2017, he was transferred and posted at Sion Division, Mumbai. As such, at the time of

impugned transfer order dated 07.08.2018 transferring him from Sion, Mumbai to Local Armed, Naigaon, he had not completed his normal tenure of two years as prescribed under the law. The Applicant was pursuing the Respondent No.3 about the follow-up action of his earlier complaint / representation to take appropriate action against errant higher Police Officials. On 31.06.2018, a meeting was held at Sion Division attended by the Applicant and Respondent No.3. In the said meeting, the Applicant had requested Respondent No.3 for a personal meeting with reference to his earlier complaint / representation. The Applicant contends that the Respondent No.3, however, got annoyed without any valid reasons and refused personal meeting.

4. The Applicant contends that the Respondent No.3 was unnecessarily got annoyed and hurt without any justifiable reason which ultimately culminated in his transfer order dated 07.08.2018 whereby abruptly, he came to be transferred from Sion to Local Armed mid-term and mid-tenure. The transfer order has been issued by Respondent No.3 – Commissioner of Police, Mumbai without following due procedure of law. The Applicant contends that the Respondent No.3 was not legally authorized and competent to transfer him. Later, by order dated 16.08.2018, the Respondent No.1 accorded *ex-post facto* sanction to the order dated 07.08.2018.

5. The Applicant contends that the impugned order dated 07.08.2018 is arbitrary and malafide and in contravention of Section 22N of Maharashtra Police Act, 1951 (as amended by Maharashtra Act No.11 of 2005, dated 06.04.2015). As per the provisions of Maharashtra Police Act, the Respondent No.3 is not empowered to transfer the Applicant who was holding the post of ACP and the competent authority is Hon'ble Home Minister only. As such, the transfer order dated 07.08.2018 is in contravention of Section 22N of Maharashtra Police Act, 1951 and it is nothing but abuse of process of law. It is also in contravention of the Circular dated 13.06.2013 issued by Respondent No.3 as well as Circular

issued by GAD dated 11.02.2015 wherein the guidelines to be observed in transfer matters are laid down. *Ex-post facto* sanction accorded by order dated 16.08.2018 does not legalize or validate the illegalities apparent in transfer order dated 07.08.2018. The Applicant, therefore, prayed to set aside the impugned order dated 07.08.2018 as well as 16.08.2018.

6. Respondent Nos.1 and 3 resisted the Application by filing Affidavit-in-reply raising common defences *inter-alia* denying the entitlement of the Applicant to the relief claimed. Respondents denied that the impugned transfer orders are in contravention of Section 22N or Proviso to Section 22N (2) of Maharashtra Police Act, 1951. According to Respondents, the impugned order dated 07.08.2018 does not amount to transfer and it is internal posting made by Respondent No.3. As such, the alleged transfer being within the Commissionerate area, it cannot be termed as a transfer and it was internal arrangement by way of posting to the Applicant from Sion Division to Local Armed, Naigaon. It is purely administrative matter and cannot be subject matter of judicial review. It is denied that the Respondent No.3 was prejudiced on account of complaint / representation made by the Applicant against other Police Officials and it has nothing to do with the refusal of personal meeting as sought by the Applicant with Commissioner of Police, Mumbai. Respondents thus denied that the transfer suffers from any malice or malafides. The Applicant was shifted from Sion Division to Local Armed in view of Confidential Reports submitted by Police Officials disclosing adverse conduct and incompetence of the Applicant to handle law and order situation and administrative exigencies. In view of the said inputs, the meeting of Police Establishment Board (PEB) at the level of Commissioner has been called and in the meeting, it was decided that to shift the Applicant from Sion Police Station as an administrative exigency and, accordingly, the PEB approved the proposal. The Respondent No.3, therefore, passed order on 07.08.2018 for immediate shifting of the Applicant from Sion Division to Local Armed. Thereafter, the proposal was forwarded to the competent transferring authority i.e. the Hon'ble Chief Minister

for approval and accordingly on 16.08.2018, the Hon'ble Chief Minister approved the proposal by according *ex-post facto* sanction to the transfer order dated 07.08.2018. As such, it is in consonance with the proviso to Section 2(2) and (2) of Maharashtra Police Act, 1951 which provides that the Hon'ble Home Minister who is competent transferring authority can effect mid-term or mid-tenure transfer even without recommendations of the PEB. The Hon'ble Chief Minister who holds the portfolio of Home Minister has accordingly approved the transfer, and therefore, it is legal and valid.

7. As regard the complaint / representation made by the Applicant against Police Officials during his tenure at Sewri, the Respondents contend that the enquiry was conducted by Joint Commissioner of Police and the report has been submitted to Director General of Police for necessary action which is being taken according to law. It has nothing to do with the shifting of the Applicant from Sion Division to Local Armed. The Respondents further pleaded that the confidential inputs received against the Applicant will be produced in a sealed cover before the Tribunal. It was in view of the confidential inputs, exigencies of administration warranted immediate shifting of the Applicant and there is no *malafide* therein. On this pleading, the Respondent Nos.1 and 3 sought to justify the impugned orders dated 07.08.2018 as well as 16.08.2018 and prayed to dismiss the application.

8. The Respondent No.4 (private Respondent) has also filed his reply stating that in pursuance of shifting of the Applicant by order dated 07.08.2018, he was posted in the place of Applicant and accordingly, joined as ACP, Sion Division on 08.08.2018.

9. Heard Shri M.D. Lonkar, learned Advocate for the Applicant and Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents at a length.

10. In view of the submissions and contentions raised by the learned Advocates, following points arise for my determination.

(A) Whether the impugned order dated 07.08.2018 is mere internal posting or it amounts to transfer and Respondent No.3 can legally pass such order ?

(B) Whether the order dated 07.08.2018 is in contravention of Proviso to Section 22N(2) of Maharashtra Police Act, 1951 ?

(C) Whether ex-post facto sanction accorded by the competent authority by order dated 16.08.2018 can legalize and validate the order dated 07.08.2018 in the eye of law ?

### Reasons

11. **As to Point No.(A)** :- At the very outset, it may be stated that, admittedly, the Applicant has joined as ACP at Sion Division on 01.12.2017 and he had not completed normal tenure of two years as provided in Section 22N and it is mid-tenure transfer. It has been issued by Respondent No.3 on the recommendation of PEB without prior approval of highest competent authority who is the Hon'ble Chief Minister in the present case and it is only on 16.08.2018, ex-post facto sanction was accorded to the order dated 07.08.2018 to which the effect has already been given by Respondent No.3 by relieving the Applicant from Sion Division. In other words, the order dated 07.08.2018 was implemented and executed immediately and ex-post facto sanction was obtained later on after one week.

12. Shri M.D. Lonkar, learned Advocate for the Applicant vehemently urged that the impugned order dated 07.08.2018 amounts to transfer though it is within the Commissionerate area, and therefore, it is not sustainable in law being in breach of proviso to Section 22N(2) of Maharashtra Police Act, 1951 and in

support of his submission referred to various decisions of this Tribunal which are tabulated 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.668/2017, dated 17.01.2018	<p>Transfer of Deputy Engineer, P.W.D. from one Division to another Division in Pune City. It was under the Act of 2005. O.A. was allowed with finding that, it amounts to transfer in the facts and circumstances.</p>
4.	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>
5.	O.A.466/2016, dated 12.07.2016	<p>Mid-tenure transfer by PEB on the ground of incompetence and adverse report. Transfer held as unsustainable and O.A.</p>

		was allowed.
6.	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.
7.	O.A.536/2016, dated 07.07.2016	Mid-term transfer of Assistant Commissioner of Drugs, Thane to Yeotmal on the basis of complaint under the Act of 2005. O.A. was allowed on the ground <i>inter-alia</i> that transfer cannot be made without verification of complaint.
8.	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.
9.	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.
10.	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.
11.	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.
12.	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.
13.	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.

13. In addition to above, reliance was also placed by the learned Advocate for the Applicant on the Judgment of Hon'ble Supreme Court in **(2009) 2 SCC 592 (Somesh Tiwari Vs. Union of India & Ors.)** wherein it has been 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. Per contra, the learned Chief Presenting Officer placed reliance on the Judgment of Hon'ble Bombay High Court in ***Writ Petition No.7554/2013 (Pradip B. Lonandkar Vs. State of Maharashtra and others, decided on 22.11.2013)***. This case relates to transfer of Police Personnel by order of Commissioner of Police under Act of 2005. However, this Judgment is of little assistance to the Respondents, as the present case needs to be considered and examined in view of the amended provision to Section 22N of Maharashtra Police Act. This aspect will be dealt with in detail a little later. Presently, suffice to note that it was under Act of 2005 and clearly distinguishable.

15. The learned C.P.O. further referred to Judgment passed by this Tribunal in ***O.A.No.897/2014 with O.A.898/2014 decided on 19.12.2014 (Sudam A. Mandarekar Vs. The Commissioner of Police & Anr.)***. This case relates to transfer of Police Personnel in the rank of Police Constable to Naik within city. The Hon'ble Tribunal held that, in view of ***Pradip Lonandkar's*** case (cited supra), local transfer does not fall within the definition of transfer and accordingly, the O.A. came to be allowed. This Judgment is also of little assistance to the Respondents while considering the transfer of Police Personnel after the amendments to Maharashtra Police Act in 2015. In fact, this Judgment has been already discussed and distinguished by this Tribunal in ***O.A.No.562/2015 (Mr. Sham M. Sundkar & Ors. Vs. The State of Maharashtra & Ors., decided on 20.11.2015)*** as shown at Serial No.8 in the Chart of the cases relied by the learned Advocate for the Applicant.

16. The learned C.P.O. also referred to Judgment of Hon'ble Apex Court in **Civil Appeal No.1010-1011 of 2004 (Union of India Vs. Sri Janardhan Debanath & Anr., decided on 13.02.2004)** wherein it has been observed as follows :

*“12. The allegations made against the respondents are of serious nature, and the conduct attributed is certainly unbecoming. Whether there was any mis-behaviour 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 mis-behaviour or 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 of 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 administration to enforce decorum and ensure probity would get frustrated. The question whether 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 administration. 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.”*

17. Now, material question comes, whether the order dated 07.08.2018 is mere internal posting made by the Commissioner of Police within his powers or it amounts to transfer in the light of amended provisions of Maharashtra Police Act. For this purpose, one need to consider the amended provision as well as legislative intent in the light of direction given by Hon'ble Apex Court in **Prakash Singh and Ors. Vs. Union of India & Ors. reported in (2006) 8 SCC 1** in deference of which amendments were incorporated in Maharashtra Police Act in 2015.

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

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.]”

19. 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.

20. 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."*

21. As such, on careful examination of the amended provisions of Maharashtra Police Act, 2015, it is quite discernible that the situation has gone to a complete change and the provisions of Act of 2005 and analogy of Act of 2005 cannot be invoked while considering the case of transfer of Police Personnel under Maharashtra Police Act as amended by 'Maharashtra Act No. XI of 2015'.

22. At this juncture, it is pertinent to note that, this aspect has been also considered by the Hon'ble Bombay High Court in **Writ Petition No.202 of 2018 (Vaishali V. Jadhav Vs. State of Maharashtra, decided on 7<sup>th</sup> March, 2018)** which finds place at Serial No.2 in the Chart of cases shown above. In the said Writ Petition, the order passed by this Tribunal in O.A.No.404/2017 was assailed. The Hon'ble Bombay High Court remanded the matter to the Tribunal with a direction to decide it afresh taking into consideration the provisions of Section 22N of Maharashtra Police Act.

23. Suffice to say, the impugned orders need to be examined and scrutinized in the light of amendments incorporated in Maharashtra Police Act in 2015 to find out as to whether it is mere internal posting or transfer and sustainable in law and facts.

24. 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.

25. In the present case, the Applicant was functioning as Assistant Commissioner of Police. This being the position, the competent authority to transfer the ACP is Hon'ble Home Minister. In the present case, the Applicant has been transferred on the basis of recommendation of PEB by the order passed by Respondent No.3 i.e. Commissioner of Police, Mumbai which is apparently not in consonance with Section 22N of Maharashtra Police Act. It nowhere empowers Respondent No.3 to transfer the Officer in the rank of ACP. This being the position of law, the Applicant cannot be transferred under guise of mere internal posting within Commissionerate to circumvent mandate of the law.

26. In fact, this aspect has been dealt with and adjudicated by this Tribunal in various proceedings and the same is no more open to debate. The principle of judicial discipline and propriety is clearly attracted. I see no reason to deviate

from the consistent view taken by the Tribunal on this point and submission of learned CPO to make reference to Larger Bench is misplaced.

27. In this behalf, reference may be made to the Judgments and orders passed by this Tribunal in O.A.No.546/2014 decided on 16.09.2014, O.A.191/2015 decided on 26.10.2015, O.A.562/2015 decided on 20.11.2015, O.A.609/2015 decided on 10.03.2016 and O.A.466 with 467/2016 decided on 12.07.2016. In these Judgments, the contention of the Government that, internal posting at one place does not amount to transfer has been consistently turned down, in view of intent behind Section 22N of Maharashtra Police Act.

28. The submissions advanced by the learned C.P.O. that the Commissioner of Police can shift Police personnel by way of internal posting from one place to another in Commissionerate and it does not amount to transfer, is fallacious and misconceived for the simple reason that, if such practice is allowed, then the concerned Police Personnel would be subjected to frequent shifting indiscriminately and they will left without remedy, if such orders are termed as internal postings only falling beyond the judicial review of the Court. This is never intended by legislature. It would defeat the very purpose of enactment which ensure that Police Personnel should get minimum tenure prescribed in law, so that they should discharge their duties and responsibilities impartially and without fear or favour.

29. True, before the impugned order dated 07.08.2018, the Applicant was transferred repeatedly within city, but the orders were not challenged by the Applicant. However, this cannot be the ground to non-suit the Applicant, as there could be no estoppel against the statute.

30. The necessary corollary of the above discussion is that, in the present case, the order dated 07.08.2018 cannot be termed as a mere internal posting. It has



all trappings of transfer. The Applicant admittedly had not completed his normal tenure of 2 years at Sion, and therefore, the impugned order is mid-term as well as mid-tenure transfer.

31. As to Point Nos. (B) and (C):- The learned C.P.O. sought to contend that, in view of alleged irregularities and conduct of the Applicant which is termed to be unbecoming of a Police Officer, the transfer has been effected and that has been approved by the Hon'ble Chief Minister on 16.08.2018 *ex-post facto*. Thus, attempt has been made that, in view of *ex-post facto* approval, irregularity, if any, has been rectified, and therefore, the impugned orders cannot be assailed. She referred to Proviso to Section 22 N(2) of Maharashtra Police Act.

32. Whereas the learned Advocate for the Applicant countered that, in view of the stand taken by the Respondents, casting aspersion on the performance and suitability of the Applicant to work as ACP at Sion, the transfer order is nothing but punitive and *ex-post facto* sanction does not validate the illegality crept therein. I found merit in his submission.

33. As stated above, the order dated 07.08.2018 was immediately implemented and executed by relieving the Applicant from the post of ACP, Sion on the basis of recommendation of the PEB and order thereon passed by Respondent No.3 who is not authorized in law. True that *ex-post facto* approval was obtained from Hon'ble Chief Minister, who is competent authority in the present case on 16.08.2018. However, even before grant of *ex-post facto* approval, the Applicant by order dated 07.08.2018 was executed and implemented. As such, one can understand the situation where the order has been passed but effect has been given to the same after obtaining *ex-post facto* approval and in that event, perhaps the efficacy of order could not have been challenged with full force. However, it is not so in present case.

34. The perusal of Proviso to Section 22N of Maharashtra Police Act, in fact, does not speak about *ex-post facto* sanction by a competent authority. It provides for issuance of such orders of mid-term and mid-tenure transfer in case of serious complaint, irregularity, law and order problem by highest competent authority without any recommendation of concerned PEB. In other words, mandate of the law requires objective satisfaction of the situation by highest competent authority before passing such orders. However, in the present case, attempt has been to legalize the transfer order by obtaining *ex-post facto* sanction. As such, the decision to transfer was already taken and after 8 days, it got simply approved by *ex-post facto* sanction which is not in consonance in the mandate and requirement of law. It is more so, when the impugned order dated 07.08.2018 has been already implemented and executed much before *ex-post facto* approval. Thus, it seems to be the case of first execution and then compliance of mandatory requirement of law, which cannot be countenanced by the Courts. It is settled legal principle of interpretation of statute that where law required to do particular thing in the prescribed manner, then it needs to be complied with strictly in the manner laid down under the statute. In the present case, there is nothing to support the contention of the learned CPO that *ex-post facto* approval by the competent authority is permissible in law. Law requires approval of highest competent authority before issuance and implementation of transfer order.

35. On the point of validity of *ex-post facto* sanction, the learned Advocate for the Applicant rightly referred to ***AIR 1986 SC 1814 (Tejpal Singh Vs. State of U.P.)***. It was a case of premature retirement of Judicial Officer on the recommendation of Administrative Judge of Hon'ble High Court, which was approved by the Hon'ble Governor. It was only after the Governor passed the order on the basis of recommendation, the matter was placed before the Administrative Committee for approval. The ratio of the Judgment is that, it is not mere irregularity which can be cured by *ex-post facto* approval given by the Administrative Committee to

the action of Hon'ble Governor after the order of premature retirement had been passed and the error committed amounts to an incurable defect amounting to illegality. Accordingly, the order of premature retirement was declared void and ineffective.

36. Needless to mention that this ratio laid down is clearly attracted in the present case. In this case also, the ex-post facto sanction was obtained after execution and implementation of the impugned order dated 07.08.2018. The necessary corollary is that *ex-post facto* approval does not validate the order dated 07.08.2018 in law.

37. During the course of hearing, the learned CPO has produced confidential file to show that the Applicant has indulged in some activities, which are unbecoming to a Police Officer, and therefore, it being sensitive issue, the immediate transfer was warranted. If that be so, then the transfer order has to be termed punitive which is not permissible in law, as it is stigmatic. Needless to mention that, in case of allegations of misconduct or conduct unbecoming to a public servant, the employer / department needs to enquire into allegations before transferring him. Any such order if passed without giving opportunity of hearing, it is not sustainable in law in view of Judgment of Hon'ble Apex Court in **Somesh Tiwari's** case (cited supra). Even assuming for a moment that it was necessitated due to administrative exigencies, absence of prior approval of highest Competent Authority is fatal and indefensible.

38. The learned CPO sought to place reliance on the Judgment of Hon'ble Supreme Court in **Janardhan Debanath's** case (cited supra in Para 16). In that case, the transfer of employees of Postal Department were made apparently on public interest and exigencies of administration because of serious allegations and defence of absence of elaborate enquiry was taken and in the facts and circumstances of matter, decision was rendered. Whereas, in the present matter, the issue needs to be understood in the context of absence of mandatory

prior approval of highest Competent Authority in the light of Judgment *in Prakash Singh's* case (cited supra).

39. Undisputedly, an order of transfer is an administrative matter. It being incident of service and should not be interfered unless it is found in contravention of mandatory requirement of law or suffers from malice or arbitrariness on the part of authority concerned. However, in the present case, as discussed above, the Respondent No.3 had issued transfer order who is not authorized in law to do the same and there was no prior approval of the highest competent authority as mandated by Proviso to Section 22N(2). The contention raised by Respondents that it is mere internal shifting and not transfer, is misconceived and not acceptable. I have, therefore, no hesitation to record negative finding on Point Nos. (A), (B) and (C) as formulated in Para No.10 of the Judgment.

40. The upshot of the above discussion leads me to sum-up that the impugned orders dated 07.08.2018 and 16.08.2018 are not sustainable in law and facts and deserves to be quashed. Hence, I pass the following order.

### **ORDER**

The Original Application is allowed. The impugned orders dated 07.08.2018 and 16.08.2018 are hereby quashed and set aside. The Applicant be re-posted on the post of Assistant Commissioner of Police, Sion, the post he was transferred from within two weeks from today. No order as to costs.

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

Mumbai  
Date : 28.11.2018  
Dictation taken by :  
S.K. Wamanse.