

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.98 OF 2020**

Shri Sachin Dilip Bari, )  
Age : 38 Yrs., Worked as Sub Divisional )  
Police Office, Daund Sub Division, )  
District Pune, )  
R/at. Flat No.302, Prathamesh Building, )  
A-Wing, Deo Palm Society, Gopalwadi, )  
Daund, Dist. Pune. )  
Address for service of Notice : )  
Shri Arvind V. Bandiwadekar, Advocate )  
Having office at 9, "Ram-Kripa", )  
Lt. Dilip Gupte Marg, Mahim, )  
Mumbai 400 016 . ) **...Applicant**

**Versus**

1. The State of Maharashtra. )  
Through Additional Chief Secretary, )  
Home Department, )  
Having office at Mantralaya, )  
Mumbai – 400 032. )  
2. Smt. Aisharvya Sharma, )  
Working as Sub Divisional Police )  
Officer, Daund Sub Division, )  
Dist. Pune. ) **...Respondents**

**Shri Arvind V. Bandiwadekar, learned Advocate for Applicant.**

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

**Respondent No.2, served but absent.**

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

**DATE : 11.08.2020.**

## **J U D G M E N T**

1. In this second round of litigation in succession the Applicant has again challenged the transfer order dated 24.12.2019, whereby he was transferred from the post of Sub Divisional Police Officer, Daund, Pune (Rural) to Deputy Superintendent of Police, Protection of Civil Rights, Aurangabad, invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act 1985.

2. In view of the pleadings and submissions advanced at bar uncontroverted facts which are necessary for the decision of this Original Application are as follows :-

- (a) Earlier the Applicant, who was working as Sub Divisional Police Officer, Daund, Pune (Rural) was transferred by order dated 14.08.2019 as Deputy Superintendent of Police, in the office of Director General of Police, State of Maharashtra.
- (b) The Applicant was transferred by order dated 14.08.2019 on the ground of default invoking Section 22(N)(2) of Maharashtra Police Act.
- (c) The Applicant has challenged the transfer order dated 14.08.2019 by filing O.A.No.806/2019, inter alia, on the ground that alleged default report was not at all referred/ considered by P.E.B. and therefore transfer order dated 14.08.2019 is unsustainable in law.
- (d) O.A.No.806/2019 was contested by the Respondents contending that the transfer on default report is legal and valid.

- (e) This Tribunal allowed the O.A.No.806/2019 by judgment dated 03.10.2019 with findings that alleged default report was not at all the foundation of the transfer and directions were given to Respondents to repost the Applicant on the post of Sub Divisional Police Officer, Daund, within two weeks from the date of order.
- (f) Respondents did not challenge the judgment in O.A.No.806/2019 and by implementing the same reposted the Applicant as Sub Divisional Police Officer, Daund, Pune (Rural).
- (g) Thereafter, the Applicant is again transferred by order dated 24.12.2019 and posted as Deputy Superintendent of Police, Protection of Civil Rights, Aurangabad, which is under challenge in the present O.A.

3. Thus in earlier round of litigation challenge was to the transfer order dated 14.08.2019, which was based on default report dated 01.08.2019 submitted by Superintendent of Police, Pune (Rural) attributing certain misconduct/ negligence in discharging duties as Police Officer, while investigating Crime No.720/2018 registered for the offence under Section 302, 201 and 120 (B) of IPC (Default report is at page 75 of P.B.). Insofar as earlier round of litigation is concerned, this Tribunal has recorded findings that in terms of minutes of P.E.B, the Applicant was shown transferred in pursuance of the guidelines issued by the Election Commission of India which were admittedly not applicable to the facts and circumstances of the case and there was no whisper of default report dated 01.08.2019 in the minutes of P.E.B. However, again file was processed afresh and proposal was moved for the transfer of the Applicant by rectifying the deficiencies and illegalities committed in transferring the applicant by order dated 14.08.2019. On this background, the Applicant is again transferred by impinged order dated 24.12.2019.

4. In view of the above, it is again necessary to set out certain admitted facts in respect of the transfer order dated 24.12.2019 under challenge in present O.A., which are as under :-

- (i) The default report dated 01.08.2019 submitted by the Superintendent of Police, Pune (Rural) alleging certain gross illegalities and misconduct while carrying investigation of Crime No.720/2018 for the offence under Section 302, 201 and 120 (B) of IPC is again used for this fresh transfer order dated 24.12.2019 (Default report is at page 75 of P.B. and annexures attached to default report are at page No.78 to 142 of P.B.).
- (ii) Shri Kulwantkumar Sarangal, Member Secretary and Additional Director General of Police (Establishment) in the office of DGP, Mumbai again initiated the process to transfer the Applicant by proposal dated 02.11.2019 (page 73 & 74 of P.B.) before PEB 1 and in turn PEB considered the proposal of transfer of the applicant dated 02.11.2019 in view of default report dated 01.08.2019 and recommended for the transfer of Applicant at Aurangabad and requested the Government to invoke clause (a) proviso of Section 22(N)(1) read with powers under Section 22(N)(2) of Maharashtra Police Act.
- (iii) Accordingly, Additional Chief Secretary (Home) prepared the proposal on 29.11.2019 and sent the file to the office of Hon'ble Chief Minister on 29.11.2019 (proposal is at letter 'X' of P.B.).
- (iv) The Hon'ble Chief Minister approved the proposal for transfer of the Applicant to Aurangabad without putting date below his signature which aspect is significant in the present matter.

- (v) In view of the approval of Hon'ble Chief Minister impugned transfer order dated 24.12.2019 was issued.
- (vi) The portfolio of the Home Ministry was with the Hon'ble Chief Minister from 28.11.2019 to 11.12.2019.
- (vii) The portfolio of the Home Ministry was with Shri Eknath S. Shinde w.e.f. 12.12.2019 (Notification at page 180).
- (viii) It is not the stand of the Respondents that the file was approved by the Hon'ble Chief Minister during his period of holding the portfolio of Home Ministry as Home Minister.

5. Before going further it is material to note that when the matter was heard at the stage of admission learned Advocate for the Applicant has sought stay to the impugned transfer order on the ground that the Hon'ble Chief Minister was not a competent authority contending that the Home portfolio was with the Hon'ble Chief Minister only for the period from 28.11.2019 (date on which new Government was formed) till 11.12.2019 and on the date of impugned order Home portfolio was with Shri Eknath Shinde. In view of above, directions were given to file affidavit of Additional Chief Secretary to clarify the date of the approval of the proposal. Shri Sanjay Kumar, then Additional Chief Secretary, accordingly, filed affidavit stating that the file was sent to the Chief Minister, Secretariat on 29.11.2019 and received back in Home Department on 24.12.2019 and on the same date impugned order has been issued. At the time of hearing original file was produced for perusal of Tribunal. As such affidavit is conspicuously silent about the date on which Hon'ble Chief Minister signed the proposal.

6. Shri Arvind V. Bandiwadekar, learned Advocate for the Applicant in reference to the minutes of P.E.B. and proposal prepared by the

Additional Chief Secretary for approval of Hon'ble Chief Minister, vehemently urged that the said authorities have invoked Section 22N(2) of Maharashtra Police Act which, inter alia, empowers competent authority to effect the mid-term transfer of any Police Personnel and competent authority was Home Minister for the cadre of Applicant, but the approval in the present case is not by the Home Minister Shri Eknath Shinde (Competent Authority within the meaning of Section 22N(2)), who was admittedly having Home Portfolio w.e.f. 12.12.2019. He therefore, submits that the approval to the impugned order is not being of competent authority, the transfer order is unsustainable in law.

7. Whereas learned P.O. submits that in view of findings and observations made in earlier O.A.No.806/2019, wherein challenge was to the transfer order dated 14.08.2019, Government had rectified legal deficiencies and with the approval of Hon'ble Chief Minister transferred the Applicant by fresh order dated 24.12.2019. She further, pointed out that the Government had invoked Clause (a) of proviso to Section 22N(1) and last proviso of Section 22N(2) which *inter alia* empowers Hon'ble Chief Minister being highest competent authority to transfer Police Personnel where Disciplinary proceedings are contemplated and highest competent authority can make such transfer in case of complaint or serious irregularities even without any recommendation of PEB. She has further pointed out that in view of default report dated 01.08.2019 submitted by Superintendent of Police, Pune (Rural) continuation of the applicant on the post of SDPO Daund was not desirable. In this behalf she placed reliance on the decision of Hon'ble Supreme Court in **(2004) 3 SCC 245 (Union of India Vs. Janardhan Debanath)**. As such there is no contravention of any express provisions of law nor malice on the part of Government and therefore challenge to the transfer order is devoid of merits.

8. At this stage, it would be apposite to reproduce Section 22N of Maharashtra Police Act for perusal and ready reference, which is 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:-*

<i>Police Personnel</i>	<i>Competent Authority</i>
(a) <i>Officers of the Indian Police Service.</i>	.... <i>Chief Minister</i>
(b) <i>Maharashtra Police Service Officers of and above the rank of Deputy Superintendent of Police.</i>	.... <i>Home Minister</i>
(c) <i>Officers up to Police Inspector</i>	.... (a) <i>Police Establishment Board No.2.</i>
	(b) <i>Police Establishment Board at Range Level</i>
	(c) <i>Police Establishment Board at Commissionerate Level.</i>
	[(d) <i>Police Establishment Board at District Level</i>
	(e) <i>Police Establishment Board at the Level of Specialized Agency]:</i>

*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 :-

- |     |   |      |   |
|-----|---|------|---|
| (a) | Police Personnel<br>Officers of the Indian Police Service.  | .... | Competent Authority<br>Chief Minister;  |
| (b) | Maharashtra Police Service<br>Officers of and above the rank of Deputy Superintendent of Police                                       | .... | <b><u>Home Minister;</u></b>  |
| (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<br>No.2;   |
| (d) | Police Personnel up to the rank of Police Inspector for transfer within the respective Range, Commissionerate or Specialized Agency   | .... | Police Establishment Boards at the Level of Range, Commissionerate or Specialized Agency, as the case may be; |
| (e) | Police Personnel up to the rank of Police Inspector for transfer within the District.   | .... | Police Establishment Board at District Level.   |

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

(underline supplied)

9. Reverting to the facts of the case now let us see the contents of the proposal placed before P.E.B. as well as contents of the minutes of P.E.B. which are at page 73 & 71 respectively. Significantly, no date of the meeting of P.E.B. is mentioned in the minutes of P.E.B. nor the Members of P.E.B. put date below their signature which has given



scope to the Applicant to contend that the minutes were prepared later on. Indeed it is not only expected but obligatory on the part of the concerned official to mention the date on which the meeting of P.E.B. was convened and the date on which the proposal has been approved by the Members of P.E.B. Tribunal hope that the concerned official should take note of it and minutes of PEB are prepared meticulously by mentioning date of meeting and Members should also put date below their signature so that process is fair and transparent.

10. Reverting to the proposal moved by Member Secretary, P.E.B. dated 02.11.2019, paragraph No.4 of the proposal is material which is as follows :-

“वर नमूद केल्याप्रमाणे, आता सध्या पोलीस उप अधीक्षक श्री.बारी हे कार्यरत आहेत, तेथील कार्यकाळात त्यांनी केलेल्या गंभीरस्वरूपाच्या कसुरीच्या बाबतीत त्यांच्या विरुद्ध नियमित स्वरूपाची विभागीय चौकशी प्रस्तावित करण्यांत आलेली असल्याने आणि यांना एका प्रकरणात पोलीस महासंचालकांनी एक वर्ष वेतनवापढ स्थगितीची शिक्षा दिली आहे असल्याने, त्यांना पुणे ग्रामीण जिल्ह्यातील उप विभागीय पोलीस अधिकारी सारख्या महत्वाच्या कार्यकारी पदावर त्यांच्या undersirability and unsuitability स्पष्ट होते, त्यामुळे सदरील प्रकरण हे मुदतपूर्व बदली करण्यासाठी अपवादात्मक प्रकरणे इतके तसेच जनहित आणि प्रशासकीयदृष्ट्या देखील त्यांना उपविभागीय पोलीस अधिकारी, डोंड उप विभागा या पदावर कार्यरत ठेवणे योग्य होणार नाही. त्यामुळे त्यांचे बदली महाराष्ट्र पोलीस अधिनियम, १९५१ मधील कलम २२न (१) चे परंतुक मधील क्लॉज (अ) आणि कलम २२न (२) मधील तरतुदीनुसार त्या पदावरून इतरत्र करण्यासाठी माझी दृढ शिफारस आहे. म्हणून पोलीस आस्थापना मंडळ क्रमांक १ चा सदस्य सचिव या नात्याने मी सदरील टिपणी व सोबतचे सहपत्रे यासोबत पोलीस आस्थापना मंडळ क्र.१ समक्ष ठेवीत आहे.

11. Likewise the conclusion of P.E.B. drawn in its meeting needs to be reproduced which is as under :-

“०२. अवलोकनांती पोलीस आस्थापना मंडळ क्र.१ हे प्रामुख्याने खालील प्रमाणे निष्कर्षाप्रत आले आहे.  
(अ) सदस्य सचिव यांच्या यासोबतच्या टिपणी मधील परि.क्रमांक ०२ मध्ये नमूद केल्याप्रमाणे पोलीस उप अधीक्षक श्री बारी यांच्याविरुद्ध आता ते ज्याठिकाणी कार्यरत आहेत, त्या ठिकाणी त्यांनी केलेल्या कसुरी बाबत पोलीस अधीक्षक, पुणे ग्रामिण यांनी अपर पोलीस अधीक्षक दर्जाच्या पोलीस अधिका-याकडून प्राथमिक चौकशी करून घेतली. त्यांत पोलीस उप अधीक्षक, श्री बारी यांनी गंभीर स्वरूपाची कसुरी केल्याचे प्रथमदर्शनी निष्पपवन्न झाले आहे. म्हणून त्यांच्या योग्य त्या छाननीअंती, पोलीस महासंचालक, म.रा. मुंबई यांच्याकडून महाराष्ट्र नागरी सेवा (शिस्त व अपिले), नियम, १९७९ मधील नियम ८ नुसार नियमित स्वरूपाची विभागीय चौकशी सुरु करण्यांचे प्रस्तावित करण्यांत आले आहे. त्यामुळे महाराष्ट्र पोलीस अधिनियम, १९५१ मधील कलम २२न (१) चे परंतुक मधील क्लॉज (a) चा वापर करून त्यांची मुदतपूर्व बदली करणे जनहिताच्या आणि पोलीस प्रशासनाच्या दृष्टीकोनातून आवश्यक आहे.

(ब) त्याचप्रमाणे सदस्य सचिव यांच्या यासोबतच्या टिपणी मधील परि.क्रमांक ३ मध्ये नमूद केल्याप्रमाणे पोलीस उप अधीक्षक, श्री बारी यांनी यापुर्वीच्या ठिकाणी कर्तव्य केले होते, तेथे देखील त्यांनी कसुरी केल्याने नुकतीच पोलीस महासंचालक, महाराष्ट्र राज्य, मुंबई यांनी त्यांना महाराष्ट्र नागरी सेवा (शिस्त व अपिले), नियम, १९७९ मधील नियम १० अंतर्गत त्यांची पुढील देय वार्षिक वेतनवाढ एक वर्षाकरिता स्थगित करण्यांची शिक्षा दिनांक १०/१०/२०१९ रोजी दिली आहे. त्यामुळे त्यांना कार्यकारी पदावर सुरु ठेवण्यासाठी ते योग्य नसल्याचे आणि त्यामुळे त्यांना एकंदरीत वर नमूद केलेल्या परि. २ (अ) आणि या परि. नमूद केलेल्या पोलीस उप अधीक्षक श्री बारी यांच्या एकंदरीत वर्तणूक ही महाराष्ट्र पोलीस अधिनियम, १९५१ मधील कलम २२न (२) मधील

तरतुदीनुसार, अपदावादात्मक प्रकरण, जनहित आणि प्रशासकीय निकड या प्रकरणात आढळून येत आहे, म्हणून त्यांची मुदतपूर्व बदली त्यांच्या सध्याच्या पदावरून या पदावर PCR Aurangabad करणे आवश्यक आहे.

एकंदरीत, वर नमुद केलेल्या वस्तुस्थिती आणि यासोबत जोडल्या सदस्य सचिव यांच्या टिपणीमधील नमुद वस्तुस्थितीच्या आधारावर पोलीस उप अधीक्षक श्री बारी यांची मुदतपूर्व बदली त्यांच्या आताच्या पदावरून PCR Aurangabad या पदावर महाराष्ट्र पोलीस अधिनियम, १९५१ मधील कलम २२न (१) चे परंतुका मधील क्लॉज (a) आणि कलम २२न (२) मधील तरतुदीनुसार करण्यास पोलीस आस्थापना मंडळ क्रमांक १ हे एकमताने याद्वारे समक्ष प्राधिका-यांना याद्वारे दृढ शिफारस करित आहे.”

12. At this juncture, it would be apposite to see the contents of proposal prepared by Additional Chief Secretary and approved by the Hon'ble Chief Minister. The relevant portion of the proposal (marked X of P.B.) is as follows :-

“उपरोक्त नमूद वस्तुस्थिती आणि सोबत जोडलेल्या सदस्य सचिव यांच्या टिपणी मधील नमूद वस्तुस्थितीच्या आधारावर, महाराष्ट्र पोलीस अधिनियम १९५१ मधील कलम २२ न (१) चे परंतुका मधील क्लॉज (a) आणि कलम २२ न (२) मधील तरतुदीनुसार पोलीस आस्थापना मंडळ क्र.१ यांनी श्री. सचिन बारी, पोलीस उप अधीक्षक यांची नागरी हक्क संरक्षण, औरंगाबाद येथे बदलीने पदस्थापना करण्याची शिफारस केली आहे. सदरहू पोलीस आस्थापना मंडळ क्र.१ यांची शिफारस शासन मान्यतेस्तव सविनय सादर करण्यात येत आहे.

६. महाराष्ट्र पोलीस अधिनियम, १९५१ च्या कलम २२ (न)(१) च्या तरतुदीनुसार पोलीस अधीक्षक / पोलीस उप आयुक्त आणि पोलीस उप अधीक्षक / सहायक पोलीस आयुक्त पदावरील पोलीस अधिका-यांचा एका पदावरील सर्वसाधारण पदावधी दोन वर्षे एवढा आहे. कलम २२ न (२) च्या तरतुदीनुसार जनहितार्थ व प्रशासकीय कारणास्तव सर्वसाधारण पदावधी पूर्ण होण्यापूर्वी बदली करण्याचे अधिकार सक्षम प्राधिका-यास आहेत. राज्य पोलीस सेवा नसेच, भारतीय पोलीस सेवेतील पोलीस उप अधीक्षक व त्यावरील सर्व पदांसाठी सक्षम प्राधिकारी तसेच, सर्वोच्च प्राधिकारी मा. मुख्यमंत्री हे सक्षम प्राधिकारी तसेच सर्वोच्च सक्षम प्राधिकारी आहेत.

श्री. सचिन बारी यांच्या विरुद्ध असलेल्या कसुरीच्या अनुषंगाने पोलीस महासंचालक यांच्या कार्यालयाच्या दि.१०.१०.२०१९ रोजीच्या आहेशान्वये देय वार्षिक वेतनवाढ एक वर्षाकरीता रोखणे ही शिक्षा देण्यात आली आहे. तसेच, अन्य कसुरीच्या अनुषंगाने त्यांच्याविरुद्ध विभागीय चौकशी प्रस्तावित करण्यात आलेली आहे. श्री. सचिन बारी यांना उपविभागीय पोलीस अधिकारी श.दोंड उपविभाग, पुणे ग्रामीण या कार्याकारी पदावर कार्यरत ठेवणे उचित ठरणार नसून, त्यांची मुदतपूर्व बदली करण्याबाबत पोलीस आस्थापना मंडळ क्र.१ यांनी शिफारस केली आहे. सदरहू शिफारस शासन मान्यतेस्तव सविनय सादर करण्यात येत आहे”

13. The entire thrust of submission made by learned Advocate for the Applicant is that it is not the contention of the Respondent No.1 that Hon'ble Chief Minister approved the proposal during his tenure holding Home Port folio (period from 28.11.2019 to 11.12.2019) and therefore approval of transfer given in capacity of Hon'ble Chief Minister (after 12.12.2019) is illegal.

14. As stated above, there is no denying that Home port folio was with Hon'ble Chief Minister from 28.11.2019 to 11.12.2019 and since 12.12.2019 the Home Port folio was with Shri Eknath S. Shinde. Had

it been the stand of the Respondent No.1 the approval to the transfer order by Hon'ble Chief Minister was given during the period of holding Home port folio then perhaps the ground of challenge to the impugned transfer order from the side of applicant would have been very limited. In that event the matter would have fall within the ambit of Section 22(N)(2) of Maharashtra Police Act as Home Minister is empowered to make mid-term transfer in Public Interest and on account of administrative exigencies, but now in view of specific stand taken by Respondent No.1 it had given some scope to the applicant to challenge the transfer order. Be that as it may, now, legality of transfer order needs to be examined on the basis of averments / pleadings made in reply, and contemporary record and powers available to the Hon'ble Chief Minister in law.

15. Material to note that PEB seems to have recommended to invoke Section 22(N)(2) of Maharashtra Police Act. In addition to it, it also recommended to invoke Clause (a) of proviso of Section 22(N)(1) which *interalia* empowers the State Government to transfer any Police Personnel prior to the completion of his normal tenure if disciplinary proceedings are instituted or contemplated against such Police Personnel. In this behalf perusal of minutes of PEB as well as proposal (marked X as P.B.) makes it quite clear that during preliminary enquiry conducted by Superintendent of Police, Pune (Rural) certain gross illegalities are attributed to the Applicant while carrying investigation in Crime No.720/2018 for the offence under Section 302, 201 and 120(B) of IPC and D.E. was contemplated. There is also specific reference in the proposal that earlier while the applicant was working at Jalna, D.E. for misconduct the punishment of withholding one increment was imposed. It is on this background, PEB formed that the continuation of the applicant on such Executive post of SDPO is undesirable and therefore recommended for his transfer.

16. I find no substance in the submission advanced by the learned Advocate for the Applicant that Clause (a) of proviso of Section 22(N)(1) which *inter alia* empowers State Government for mid-term transfer where Departmental proceedings are instituted or contemplated is not attracted in the present situation. True, till date no charge-sheet is issued against the Applicant as fairly conceded by learned P.O. However, nonetheless there is no denying that D.E. was contemplated against the Applicant for illegalities in carrying investigation of Crime No.720/2018. The authority empowered for such transfer is State Government, as per Clause (a) of proviso of Section 22(N)(1) of Maharashtra Police Act, whereas as per Section 2, Clause 14(B) the word "State Government" means Government of Maharashtra. As such the Hon'ble Chief Minister being highest competent authority of the Government can very well exercise powers available to him in proviso (a) of Section 22(N)(1) of Maharashtra Police Act. Only because till date no charge-sheet is issued as mentioned in PEB minutes that itself does not invalidate the transfer order in view of the decision of Hon'ble Supreme Court in **Janardhan Debanath's case (cited supra)**.

17. It would be useful to refer paragraph No.14 of the judgment in **Janardhan Debanath's case**, which is as follows :-

*"14. 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 for the respondents, of holding an elaborate enquiry is to be insisted upon the very purpose of transferring an employee in public interest of 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 any way or the other. The judgment of High Court is clearly indefensible and is set aside. The writ petitions filed before the High Court deserve to be dismissed which we direct.”*

18. Indeed this aspect of transfer on the ground of default report is already considered by this Tribunal in earlier round of litigation i.e. O.A.No.806/2019. The legal defect in earlier transfer order was absence of reference of default report in PEB minutes and on that ground earlier transfer order was quashed. Now, the said legal deficiency has been rectified and after considering default report PEB again recommended for the transfer of the Applicant. As held by Hon'ble Supreme Court whether there was any such mis-behaviour / mis-conduct can be gone into any Departmental proceedings and for the purpose of effecting transfer the question of holding elaborate enquiry is not required. What is required is, prima facie, satisfaction of the authority concerned which is obvious in the present matter. Needless to mention whether the Applicant could be transferred to different division on the background of certain mis-conduct is matter which does not squarely falls within judicial domain and it is for the administration to see the desirability of the employee for continuation on particularly post.

19. Furthermore, in view of last proviso of Section 22(N)(2) of Maharashtra Police Act highest competent authority i.e. Hon'ble Chief Minister can make mid-term transfer of any Police Personnel in case of serious compliant, illegalities, law and order problem, even without any recommendation of the concerned PEB. The powers contemplated under this proviso available with the Hon'ble Chief Minister is not circumscribed by any other provision of Maharashtra Police Act. So far as facts of present case are concerned certain gross mis-conduct has been attributed to the Applicant while functioning as SDPO, Daund, and such illegalities on the part of applicant certainly qualify

for exercise of last proviso of Section 22(N)(2) of Maharashtra Police Act.

20. True, as emphasized by learned Advocate for the Applicant there is no reference of invoking the said proviso either in minutes of PEB or in transfer proposal moved by Additional Chief Secretary. True, normally, the legalities of the impugned order have to be tested on the basis of contents in transfer order or contemporary record of transfer and it cannot be supplemented by any other ground of factual aspect. However, in so far as legal aspects are concerned, it cannot be disputed that Hon'ble Chief Minister can make mid-term transfer without any recommendation of concerned PEB as expressly mentioned in last proviso of Section 22(N)(2) of Maharashtra Police Act. As such this is the case where power to transfer without recommendation of concerned PEB exists in law and therefore mere omission of the said proviso in proposal of transfer or in minutes of PEB will not have effect of invalidating the transfer order, where such power exists with the highest competent authority in law. In this behalf, learned P.O. rightly referred to the issue laid down by the Hon'ble Supreme Court in ***Union of India Versus Tulshiram Patel AIR 1985 SC 1416*** wherein it has been held that even mention of wrong proviso or omission to mention proviso which contains source of power will not have effect of invalidating an order where such source of power exists in law. It was the matter pertaining to Article 311 (2) of the Constitution of India and in fact situation Hon'ble Supreme Court held that non mentioning of relevant clause of second proviso to Article 311 (2) of the Constitution of India is not fatal and order must be said as having been made applying relevant clause of Article 311 (2) of the Constitution of India.

21. Needless to mention that order of transfer is the administrative order and it is incident of service. Therefore, transfer order should not be interfered with, except where malafides on the part of authorities is

proved or the transfer is in breach of express provisions of law. In this behalf, reference can be made to the decision of Hon'ble Bombay High Court of **V.B. Gadekar, Deputy Engineer Vs MHADA : 2007 (6) BOM CR 579**, wherein it has been held as follows :-

*“Ordinarily, orders of transfer are made in the exercise of administrative authority to meet the exigencies of service and in public interest. How the Administration has to run its affairs is not a matter which squarely falls in the judicial domain. Unless the orders of transfer were in conflict with Rules and were made for ulterior motives or in patent arbitrary exercise of powers, the Court would decline to interfere in such matter. The transfer could be due to exigencies of service or due to administrative reasons. The Petitioners in the present case have failed to demonstrate as to how the order of transfer has been passed for collateral purposes or is a patent arbitrary exercise of power.”*

22. Now turning to the facts of the present case, the record clearly spells that the Government invoked Clause (a) of proviso of Section 22(N)(1) of Maharashtra Police Act and in addition to it last proviso of Section 22(N)(2) also empowers the Hon'ble Chief Minister to make mid-term transfer in case of serious complaint, irregularities etc. Suffice to say there is no breach of any express provisions of law neither any malafides can be attributed to the Government.

23. Shri Arvind V. Bandiwadekar, learned Advocate for the Applicant tried to make much capital of the absence of one of the Member of PEB in meeting. True, perusal of minutes of PEB (page 72 of P.B.) reveals that Shri P.B. Singh, Director General, Anti Corruption Bureau who was Hon'ble Member of PEB was not present in the meeting. However, this aspect has now become insignificant in view of aforesaid discussion, wherein I have come to the conclusion that the impugned transfer has been issued by invoking Clause (a) of proviso of Section 22(N)(1) read with last proviso of Section 22(N)(2) of Maharashtra Police Act. Apart, absence of one Member of the Committee which was consisting of five Members is not fatal, where remaining four Members have unanimously recommended for the transfer of the Applicant.

Suffice to say the submission advanced by learned Advocate on this score holds no water.

24. Similarly, submission advanced by learned Advocate that in absence of recommendation of PEB at District Level as contemplated in Section 22(J)(2) or under Section 22(J)(4) the impugned transfer order is unsustainable in law is also devoid of any merit. In present case, Applicant was transferred by the Government invoking Clause (a) of proviso of Section 22(N)(1) read with last proviso of Section 22(N)(2) of Maharashtra Police Act and therefore question of recommendation by District PEB at District Level or at the level of specialist agency does not survive. Indeed Section 22(J)(2) and 22(J)(4) as referred by learned Advocate for the Applicant pertains to the transfer of Police Personnel to the rank of Police Inspector only and not applicable to the applicant being in the rank of Sub Divisional Police Officer.

25. The totality of the aforesaid discussion leads me to conclude that the impugned transfer order does not suffer from any illegality and needs no interference by this Tribunal. Original Application, therefore, deserves to be dismissed.

26. Original Application is dismissed with no order as to costs.

Sd/-

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

Prk