

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD
ORIGINAL APPLICATION NO.506 OF 2021
(Subject:- Transfer)**

DISTRICT: - BEED.

Ranjana Ashruba Barde,)
Age :36 years, Occu.: Service)
(as Women Police Nasik,)
Police Station Peth Beed),)
R/o: Ankushnagar,)
Behind Kapilmuni Temple,)
Dist. Beed.)
Mob. 8788419182..)...**APPLICANT**

V E R S U S

1. The Superintendent of Police,)
Beed,)
Near Civil Hospital,)
Barshi Road, Beed.)

2. The Police Inspector,)
Police Station Peth Beed,)
Beed.)...**RESPONDENTS**

APPEARANCE : Ms. Preeti Wankhade, learned Advocate
for the applicant.

: Smt. M.S. Patni, learned Presenting
Officer for the respondents.

CORAM : **SHRI V.D. DONGRE, MEMBER (J)**

DATE : **06.06.2022**

ORDER

By invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 this Original Application is filed challenging the impugned order of transfer of the applicant dated 23.08.2021 (Annex. 'A-4') issued by the respondent No.1 thereby transferring the applicant from Police Station, Peth Beed, Dist. Beed to Police Station, Ashti, Dist. Beed.

2. The facts in brief giving rise to this application can be stated as follows:-

- (i) The applicant entered into service in Police Department of State Government as Police Constable on 17.11.2007. She was appointed as such in Beed District Police Force. She was promoted as Naik Police Constable in the year 2012 and since then working as such. In general transfer of the year 2018, the respondent No.1 i.e. the Superintendent of Police, Beed transferred her among others vide letter dated 25.05.2018 (Annex. 'A-1') from Police Head Quarters, Beed to Police Station Peth Beed. In that order, her name was at Sr.No.58. She was however, relieved belatedly on 24.06.2018. She therefore, joined at Police Station Peth Beed on 25.06.2018 (wrongly mentioned as 25.06.2020). Since then she was

working at the said Police Station. However, within the period of three years and two months, she is now transferred from the said Police Station, Peth Beed, Dist. Beed to Police Station, Asthi, Dist. Beed by impugned order of transfer dated 23.08.2021 (Annex. 'A-4'). It is mid-tenure transfer. It is not issued in accordance with law.

- (ii) It is further submitted that before issuances of impugned transfer order dated 23.08.2021, the applicant was called for oral counseling in the Police Head Quarters on 20.08.2021 by the respondent No.1. During the oral counseling, the applicant conveyed that her husband namely Parmeshvar Pawar is working in Class -'IV' cadre in the Finance Department in Zilla Parishad, Beed as per his appointment order dated 09.04.2009 (Annex. 'A-2'). Moreover, the applicant had not completed her normal tenure of five years at Police Station, Peth Beed and she was not due for transfer. The impugned order dated 23.08.2021 (Annex. 'A-4') is shown as general transfer order. It is liable to be quashed and set aside being is not issued in accordance with law.

(iii) It is further submitted that immediately thereafter the applicant made representation dated 25.08.2021 (Annex. 'A-5') to the respondent No.1 conveying her difficulty. It is not considered. The impugned order of transfer of the applicant is issued in contravention of provisions of Section 22N (1) read with Section 2(6A) of Maharashtra Police Act and therefore it is not sustainable in the eyes of law and is liable to be quashed and set aside.

3. Affidavit-in-reply is filed on behalf of the respondent Nos.1 and 2 by one Umashankar Manmath Kasture, working as the Deputy Superintendent of Police (HQ), Beed. Dist. Beed. Thereby he denied the adverse contentions raised in the application.

(i) It is admitted that the applicant has completed tenure of three years and two months on her present post but the applicant has served in Beed City and Taluka more than 12 years since 2007. Therefore, she was liable to be transferred from Beed City and Taluka as per G.R. dated 23.04.2010 (Annex. 'R-1'). More particularly the applicant was liable for transfer as the said G.R. dated 23.04.2010 prohibits working in स्वग्राम तालुका. In view of said G.R. dated 23.04.2010 and clause of स्वग्राम तालुका mentioned therein the normal tenure of five years in

स्वग्राम तालुका would not be applicable. For the said reason only even if there is ground of couple convenience made by the applicant in her subsequent representation dated 25.08.2021, it was not considered. In the circumstances, there is no merit in the Original Application and is liable to be dismissed.

- (ii) Moreover, the impugned order of transfer of the applicant is passed by placing the matter before the requisite Police Establishment Board. The respondents have produced on record the minutes of meeting of Police Establishment Board. It is also submitted that the applicant has completed 12 years of service in Beed Taluka and the Beed Taluka is her स्वग्राम तालुका. Therefore, impugned order of transfer of the applicant is legal and proper and the application is liable to be dismissed.

4. Affidavit-in-rejoinder is filed by the applicant. Thereby she has denied all the adverse contentions raised in the affidavit-in-reply.

- (i) It is specifically contended that specific provision for transfer of Police Personnel is introduced in the Maharashtra Police Act by way of Section 22(N) on

06.04.2015 with effect from 16.02.2015. In view of same, previous circular regarding the transfer issued by the Government cannot prevail.

- (ii) Moreover in view of the fact that the provisions of the present amended Maharashtra Police Act are introduced under Article 309 of Constitution of India and therein, there is no criteria of transfer on completion of 12 years in one Taluka for police constabulary. As per the provision of Section 22(N) (1) (b), the applicant has not completed tenure of five years at one Police Station i.e one place of posting. In view of same, the contentions raised on behalf of the respondents in their affidavit-in-reply are not tenable and liable to be rejected.

5. The applicant also filed the additional affidavit and placed on record G.R. dated 07.07.2020 and 23.07.2020 regarding the general transfer and fixing the date of general transfer till 31.07.2020. The applicant thereby also produced on the G.R. dated 29.07.2021 extending the date of general transfer of 2021 till 09.08.2021 and fixing period of transfer under exceptional circumstances and special reasons from 10.08.2021 to 31.08.2021. In view of that it is the contention of the applicant that impugned order dated 23.04.2021 (Annex. 'A-4') cannot be

termed as general transfer order and it is to be treated as transfer order under exceptional circumstances and special reasons. Hence the contentions raised on behalf of the respondents are not tenable.

6. I have heard the argument advanced by Ms. Preeti R. Wankhade, learned Advocate for the applicant on one hand the Smt. M.S. Patni, learned Presenting Officer for the respondent on other hand.

7. Upon perusal of the rival pleadings and documents on record, it is evident that the applicant is working on the post of Naik Police Constable. Since 25.06.2018 in view of general transfer order dated 25.05.2018 (Annex. 'A-1') till as on issuance of general transfer order dated 23.08.2021 (Annex. 'A-9'), she completed tenure of three years and two months on the said post.

8. The transfer of police personnel is now governed by the provisions incorporated in chapter II-A comprising of Section 22B to 22T of the said Act. The said chapter II-A is inserted under Maharashtra Police Act by Mah. 24 of 2014 w.e.f. 01.02.2014. Some of the Sections of the said chapter were amended by Mah. 11 of 2015 w.e.f. 16.02.2015. At that time for effecting abovesaid amendment in Maharashtra Police Act, additional requisite definitions are also introduced which are Section 2(6A) defining

“General Transfer”, Sub Section (6B) defining “Mid-term Transfer”, Sub Section (10A) defining “Police Establishment Board”, Sub Section (11A) defining “Police Personnel” and Sub Section (11B) defining “post”. Before introducing of chapter II-A in Maharashtra Police Act, the transfers of Police personnels were governed by the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as ‘Transfer Act, 2005’) which is applicable to the Government servant in general. By amending Maharashtra Police Act, the transfers of Police Personnels are carved out and those provisions will prevail over the Transfer Act, 2005.

9. In this background if the facts of the present case are considered, the tenure of the Naik Police Constable held by the applicant will be governed by Section 22N (1) (b) which is as under:-

“22N. Normal tenure of Police Personnel, and Competent Authority

(1)

(a)

(b) For police Constabulary a normal tenure shall be of five years at one place of posting;”

10. The applicant is working on the post of Police Naik. The post of Police Naik falls in the definition of constabulary as mentioned

under Section 2(4A-1) of the Maharashtra Police Act which is as follows:-

“2(4A-1) “Constabulary” means Police Constable, Police Naik, Police Head Constable and Assistant Sub-Inspector.”

In view of same, the normal tenure of the post held by the applicant is of five years at one place of posting.

11. Admittedly, the applicant has completed the tenure of three years and two months at Police Station, Peth Beed, Dist. Beed as on issuance of impugned transfer order dated 23.04.2021 (Annex. ‘A-4’). In view of the same, *prima-facie*, it has to be termed as mid-tenure transfer order.

12. Learned Advocate for the applicant in her oral arguments also stated that it is mid-tenure as well as mid-term transfer order more particularly in view of G.R. dated 29.07.2021 (Annex. ‘A-7’ collectively, page Nos.94 to 96 of P.B.). The said G.R. states that general transfer order of the year, 2021 should be completed by 09.08.2021 whereas the transfer under exceptional circumstances and special reasons should be completed from 10.08.2021 to 30.08.2021. The relevant causes of the said G.R. bearing Nos. 3, 4 and 5 are as under:-

“३) सर्वप्रथम सर्वसाधारण बदल्यांची कार्यवाही दि.९ ऑगस्ट, २०२१ पर्यंत पूर्ण करण्यात यावी.

४) सर्वसाधारण बदल्यांची कार्यवाही पूर्ण झाल्यानंतरच, जी पदे रिक्त राहतील केवळ अशा रिक्त पदांवरच विशेष कारणास्तव बदल्या

दि.१० ऑगस्ट,२०२१ ते दि. ३० ऑगस्ट, २०२१ या कालावधीपर्यंत अनुज्ञेय राहतील. सबब, जे पद रिक्त नाही अशा पदावरील कार्यरत अधिकारी/कर्मचारी यांची अन्यत्र बदली करून अशा पदावर विशेष काणास्तव बदली करता येणार नाही.

- ५) बदली अधिनियमातील कलम ४ (४) नुसार विशेष कारणांमुळे बदली करणे आवश्यक असल्याची सक्षम प्राधिकाऱ्याची खात्री पटली असेल अशा बाबतीत तसे लेखी कारण नमूद केल्यानंतरच अशा विशेष कारणास्तव करावयाच्या बदल्या करण्यात याव्यात. ”

In counter nothing is produced by the respondents. In view of same, prima-facie it appears that the impugned transfer order being issued on 23.08.2021 is to be termed also as a mid-term order.

13. In view of above, the provisions of Section 22N of Maharashtra Police Act are to be considered. For the sake of convenience and to appreciate the fact, provision of Section 22N (1) and (2) are reproduced here:-

“22N. Normal tenure at 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 Commissionerates 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 Boards at Range Level, |
| | (c) Police Establishment Boards at Commissionerate Level |
| | (d) Police Establishment Boards at District Level |
| | (e) Police Establishment Boards 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 personner; 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 in 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 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 other problem the highest Competent Authority can make the transfer of any Police Personnel without any recommendation of the concerned Police Establishment Board.]

14. Perusal of abovesaid provision would show that the power to effect the mid-tenure transfer for the reason mentioned there under in proviso vests in the State Government, whereas the power to effect the transfer under exceptional cases, in public interest and on account of administrative exigencies vests in the

Competent Authority. The Competent Authority for the post of Constabulary is Police Establishment Board at District Level.

15. In the case in hand the impugned transfer order is issued by the respondent No.1 i.e. the District Superintendent of Police, Beed in concurrence with Police Establishment Board at District level. That fact is demonstrated by the respondents by producing on record the minutes of meeting of the said Police Establishment Board which was held on 29.07.2021.

16. The impugned order of transfer is dated 23.08.2021. If it is considered in the background of the G.R. dated 29.07.2021, the said order will not be covered under general transfer not being issued on or before 09.08.2021 till which period, general transfers were permissible. Hence this order will have to be seen as order for special reasons and exceptional circumstances.

17. As per the contentions raised by the respondents the applicant has been transferred by impugned order dated 23.08.2021 in view of provisions of G.R. dated 23.04.2010 (Annex. 'A-1' at page no.72 of P.B.). So far as the said G.R. is concerned, in the minutes of meeting of the Police Establishment Board in clause No.2 it is recorded as follows:-

“२) तालुक्यामध्ये एकापेक्षा जास्त पोलीस ठाणे असल्यास (शाखेसह) त्या तालुक्यामधील कमाल कालावधी सर्व संवर्गातील खंडीत अथवा अखंडीत सेवा धरून १२ वर्ष पूर्ण झाला असल्यास बदली करण्यात येईल. महाराष्ट्र शासन निर्णय गृहविभाग क्रमांक टीआरएन-०११०/प्र.क्र.४८८/पोल-५ ब दि.२३.०४.२०२०१) ”

18. In view of above, it is the contention of the respondents that the applicant is undisputedly native of Taluka, Beed in Beed District. She is working in Beed Taluka jurisdiction since, 2007 i.e. for more than 12 years. Hence the applicant is being transferred.

19. Learned Advocate for the applicant, however, in this regard submitted in consistence with contentions raised in the affidavit-in-rejoinder that the provision of G.R. dated 23.04.2010 (Annex. 'R-1') said to have been ineffective or repealed when the provisions of transfers were incorporated in chapter II-A of Maharashtra Police Act by inserting Section 22B to Section 22T as a the provisions of Act are amended by invoking powers under the Article 309 of Constitution of India, it would prevail over the provisions in G.R.

20. Admittedly, the applicant is not challenging the G.R. specifically seeking any prayer. There cannot be duality of opinion that the provisions of Maharashtra Police Act to the extent of transfer of the Police Personnel will prevail upon G.R./ notification or circular issued by the Government but whether entirely or partially contents of such G.R., notification or circular would have stood repealed will be dependent on the facts and circumstances. If certain portion is not in consistent with the provisions of law

may continue to be considered. Learned Advocate for the applicant has not shown me any piece of evidence that the said G.R. dated 23.04.2010 is repealed.

21. It is true that in the said G.R. dated 23.04.2010, there is provision regarding the fact that the police personnel should not be given posting in his own Taluka. However, I did not find any specific provision in the said G.R. as contended by the respondent that after completion of 12 years tenure of posting in one Taluka, such incumbent would be liable to be transferred. In this regard the tenure of the posting of the applicant will be governed by the provisions of Section 22N(1) (b) of five years as already stated.

22. Moreover, in terms of proviso (1) of Sub Section (1) of Section 22N of Maharashtra Police Act, the power for mid tenure transfer is vested in the State Government. The power of transfer under Section 22N (2) of the said Act for the reasons stated in that provision is vested in Competent Authority i.e. the respondent No.1 in this case.

23. It is not a contention of the respondents that the case of the applicant falls under Section 22N (2) of the Act. It is being mid-tenure transfer, it falls under Sub-Section (1) proviso (1) of Section 22N of Maharashtra Police Act. The impugned order is not issued by the State of Maharashtra. It is issued by the respondent No.1 with concurrence of the requisite Police Establishment Board at

District Level. Hence the impinged transfer order of the applicant cannot be said to be legal and proper and in accordance with law. It is certainly issued in contravention of the provisions of Section 22N(1) proviso. Even if order is considered under Section 22N(2) no case is made out to cover the ground under the said provision which speaks of exceptional cases, in public interest and on account of administrative exigencies in accordance with law. In the circumstances the impugned order if seen from any angle, it cannot be said that it is issued in accordance with law. It is therefore, liable to be quashed and set aside. I therefore proceed to pass the following order:-

ORDER

The Original Application is allowed in following terms:-

- (A) The impugned order dated 23.08.2021 (Annex. 'A-4') issued by the respondent No.1 to the extent of the applicant is quashed and set aside.
- (B) The respondent No.1 is directed to repost the applicant at her earlier place of posting within the period of one month from the date of this order.
- (C) No order as to costs.

(V.D. DONGRE)
MEMBER (J)

Place:-Aurangabad
Date :- 06.06.2022
SAS O.A.506/2021