

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.357 OF 2020
(Transfer)**

DISTRICT: - AHMEDNAGAR.

Vinod S/o. Rohidas Borge,)
Age-34 years, Occu. : Service (Police Naik),)
R/o. at present Police Head Quarter,)
Ahmednagar,)
Tq. & Dist. Ahmednagar.)..**APPLICANT**

V E R S U S

- 1. The State of Maharashtra,**)
Through its Principal Secretary,)
Home Department,)
Mantralaya, Mumbai – 32.)
- 2. The Superintendent of Police,**)
Ahmednagar, Dist. Ahmednagar.)
- 3. The Police Inspector,**)
Parner Police Station, Ahmednagar,)
Tq. & Dist. Ahmednagar.)
- 3. Sub-Divisional Police Officer,**)
Nagar Rural Department,)
Ahmednagar.)..**RESPONDENTS**

APPEARANCE : Shri N.B. Narwade, learned Advocate
for the applicant.

: Shri S.K. Shirse, learned Presenting
Officer for the respondents.

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

DATE : **07.03.2022**

ORDER

By invoking the jurisdiction under Section 19 of the Administrative Tribunals Act, 1985, the applicant has filed this O.A. challenging his impugned order of transfer dated 11.9.2020 (Annexure "A-1") issued by the respondent No. 2 i.e. the Superintendent of Police, Ahmednagar, Dist. Ahmednagar, thereby transferring the applicant from Parner Police Station, Tq. Parner, Dist. Ahmednagar to Police Head Quarter, Ahmednagar.

2. The facts in brief giving rise to this application are as follows:-

(i) The applicant is working on the post of Police Naik in Police Department. Since 30.5.2017 the applicant was working at Parner Police Station. Allegedly in view of default report he has been transferred by the impugned transfer order dated 11.9.2020 (Annexure "A-1"), from there to Police Head Quarter, Ahmednagar.

(ii) It is stated that while working at Parner Police Station, as per order dated 16.1.2020 issued by respondent No. 2 the applicant was temporarily posted at Police Headquarter, Ahmednagar for Bandobast duties and since then he was performing his duty there. Before that, the preliminary

enquiry was initiated against the applicant. His statement (Annexure "A-3") was recorded in the said preliminary enquiry on 13.3.2020. The applicant gave all the details of discharging his duties honestly while working at Parner Police Station. However, after completion of preliminary enquiry, the departmental enquiry was initiated against the applicant as per order dated 16.6.2020 (Part of Annexure "A-4" colly.) alleging misconduct and charge-sheet was served upon him. The Sub-Divisional Police Officer, Ahmednagar Rural Division Ahmednagar was appointed as an enquiry officer. The said departmental enquiry is in progress.

(iii) It is further contended that the departmental enquiry is wrongly initiated against the applicant ignoring the facts narrated by the applicant in his statement recorded in preliminary enquiry about discharge of his duty honestly and placing on record the details of various serious crimes registered against various criminals. In view of the same, there is no substance in the said default report on the basis of which transfer order is issued illegally. The impugned transfer order is issued without following due procedure of provisions. Section 22J(6) of the Maharashtra Police Act, 1951 is quoted in the impugned order of transfer, which is not in existence. In view of the same, transfer order of the

applicant is not legal and proper and it is liable to be set aside.

3. Affidavit in reply is filed on behalf of respondent No. 2 by Shri Manoj Govind Patil, Superintendent of Police, Ahmednagar, thereby adverse contentions raised in the O.A. are denied. It is specifically contended that the impugned order of transfer of the applicant is issued in the background of default report dated 25.12.2019 (Annexure "R-1") submitted by the Assistant Police Inspector, Police Station, Parner to the respondent No. 2 about illegal activities of the applicant and one other Police Constable, who were in the contact of persons doing illegal activities in the jurisdiction of Parner Police Station and were maligning the image of the officers working in the Police Station. The applicant was also harassing some persons in the jurisdiction of Parner Police Station. The complaints were received in that regard. Police Inspector, Police Station, Belwandi, District Ahmednagar was deputed to conduct the preliminary enquiry in respect of the activities of the applicant and another. After completion of preliminary enquiry, he submitted his report on 5.6.2020. It was found that the applicant used to provide confidential and secrete information to anti-social elements and also used to disobey the orders of the superior officers and used to remain absent from duty without prior permission of the superior officers. Thereafter, by

order dated 16.6.2020 the departmental enquiry is ordered against the applicant and one another and Sub Divisional Police Officer, Ahmednagar Rural Division Ahmednagar, was appointed as an enquiry officer.

4. It is further contended that the Police Establishment Committee after having considered the default report, as well as, preliminary enquiry report, concurred the impugned transfer order of the applicant. It is legal and proper. The impugned transfer order of the applicant is passed in view of exceptional circumstances and on administrative ground. Hence, the O.A. is liable to be dismissed.

The minutes of Police Establishment Committee are also annexed with the affidavit in reply at page Nos. 55 to 58 of paper book.

5. The applicant has filed affidavit in rejoinder and has denied the adverse contentions raised in the affidavit in reply. It is stated that during the pendency of this O.A. the applicant has received show cause notice as to why he should not be dismissed from service observing that charges are proved against him. The said show cause notice dated 3.6.2021, enquiry report of May 2021 and the final defence of the applicant are placed on record at Exhibit "R-1" collectively at Page Nos. 63 to 110 of the paper book. During the course of the arguments, learned Advocate for the applicant

submitted that the final order in departmental enquiry dated 9.7.2021 is passed and the applicant is reduced in the rank to the post of Police Constable for the period of two years.

6. I have heard the arguments advanced in detailed by Shri N.B. Narwade, learned Advocate for the applicant on one hand and Shri S.K. Shirse, learned Presenting Officer for the respondents on the other hand.

7. 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:-

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

8. In terms of Section 22N (1) (b) of the said Act, the normal tenure for the Police Constabulary is of five years at one place of posting. The applicant was working in the Parner Police Station from 30.05.2017. Hence, as on impugned transfer order dated 11.09.2020 (Annex. 'A-1'), he had completed the tenure hardly of three years and three months in Parner Police Station. Hence, the impugned transfer order is mid-tenure transfer order and as being issued on 11.09.2020 it is also midterm transfer order. In view of

the same, the provisions of Section 22N(2) of the Maharashtra Police Act would come into play which is as follows:-

“ 22N (2) In addition to the grounds mentioned in sub-section (1), in exceptional cases, in public interest and on account of administrative exigencies, the Competent Authority shall make mid-term transfer of any Police Personnel of the Police Force.”

9. As per the parameters laid down in abovesaid provision, the mid-term and mid-tenure order can be passed by the Competent Authority. This impugned transfer is caused within District. Section 22J-2 speaks of functioning of Police Establishment Board at District Level. The Competent Authority is defined under Section 2(1A) being the Competent Authority mentioned in Section 22N. Hence, Competent Transferring Authority at District Level for the officers upto Police Inspector is Police Establishment Board at District Level as provided under Section 22N of the Maharashtra Police Act.

10. It is the grievance of the applicant that the impugned transfer order is not passed in accordance with law. In this regard learned Advocate for the applicant placed reliance on the decision of the Single Bench of this Tribunal in following two order:-

- (1) **Original Application No.95 of 2021 in the case of Nitin Surendra Shelar Vs. The State of Maharashtra & Two Ors.** decided on 15.12.2021.

- (2) **Original Application No.356 of 2020 in the case of Kiran Baban Kolpe Vs. The State of Maharashtra & Two Ors.** decided on 04.02.2022.

11. Both these cases deal with transfer of Police Officials. In the first case, the applicant was a Police Constable. His transfer was made till further orders in the background of the default report having relations with criminals. In the said case it is observed that the impugned transfer order was issued without concurrence of requisite Police Establishment Board and moreover, the alleged order of deployment is to be treated as transfer order only. However, no case was made out under Section 22N(2) of the Maharashtra Police Act and therefore, the impugned transfer order therein was set aside.

12. In the second case, the applicant was a Police Constable. There was default report against him. In the said case it is observed that there was no substance in the allegations levelled against the applicant as those are vague in nature. In view of that the impugned transfer order therein was also set aside.

13. Learned P.O. for the respondent on the other hand submitted that those two decided cases by this Tribunal would not help the applicant as in the case in hand preliminary enquiry was made in respect of the allegations levelled against the applicant in

the default report. After completion of the preliminary enquiry, the departmental enquiry was completed and final order is passed holding charges are proved against the applicant and he is reduced in the rank to the post of Police Constable for two years. In view of same, according to him, allegations levelled against the applicant cannot be said to be vague or without any substance.

14. In the case in hand, it is a fact that the impugned transfer order is issued in the background of the default report dated 25.11.2019 (page No.46 of Paper Book) submitted by the Assistant Police Inspector, Police Station, Parner in respect of allegations levelled therein. The preliminary enquiry was held against the applicant. Admittedly, the statement of the applicant was also recorded therein. Thereafter, by order dated 16.06.2020, the departmental enquiry was ordered against him and the Sub Divisional Police Officer (S.D.O.), Ahmednagar Rural Division Ahmednagar was appointed as an enquiry officer. That apart, the respondents have placed on record the minutes of meeting of Police Establishment Board dated 11.09.2020 (page No.55 of Paper Book) along with the affidavit-in-reply. As per the said minutes, the transfer of the applicant is recommended on the basis of default report. In view of same, in the case in hand, the impugned transfer order is issued by the respondent No.2 in concurrence of the requisite Police Establishment Board District level. Hence,

there is compliance of requisite procedure applicable for midterm and mid-tenure transfer. It is only to be seen as to whether the case is made out by the respondents as contemplated under proviso to Sub-Section (1) of Section 22N and Section 22N(2) of the Maharashtra Police Act. Those provisions are reproduced herein under to appreciate the facts of this case:-

“22N (1) 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.”

15. As stated earlier, the reason for transfer of the applicant is given as that of the default report dated 25.11.2019 (page nos.46 to 49 of Paper Book) submitted by the Assistant Police Inspector, Paner Police Station, Ahmednagar, Dist. Ahmednagar with the respondent No.2 i.e. the Superintendent of Police, Ahmednagar. It is also a fact that on the basis of said default report, the transfer of the applicant was proposed from Paner Police Station to Police

Head Quarter, Ahmednagar. The requisite Police Establishment Board for District Level considered the said ground and concurred the transfer as proposed. It is a fact that immediately upon receipt of the said default report dated 25.11.2019, preliminary enquiry was done through Police Inspector, Police Station, Belwandi, District Ahmednagar. In the said preliminary enquiry amongst others the statement of the applicant was also recorded.

16. It is the grievance of the applicant that the explanation and the facts given by him in his self statement were not considered which were sufficient to show that the applicant was discharging his duties honestly. However, as the sufficient material was found against the applicant and one another, departmental enquiry was ordered by the respondent No.2 vide order dated 16.06.2022. The said departmental enquiry is completed during pendency of the Original Application and final order is passed and the applicant is reduced in the rank to the post the Police Constable for two years. However, whatever happened after passing of impugned order of transfer of the applicant dated 11.09.2022 cannot have much barring on the present proceeding. But the fact remains that the respondent No.2 has acted upon the default report dated 26.11.2019 for making preliminary enquiry. After preliminary enquiry, the departmental enquiry is also ordered. From the record it cannot be said that prima-facie, patent false allegations

are levelled against the applicant. The endeavor has been done by the respondents to verify the allegations which were disclosed in the default report.

17. It is the grievance of the applicant that the impugned order of transfer is punitive in nature as the departmental enquiry was held against him in respect of allegations made out in the default report dated 25.11.2019. However, considering overall circumstances, I do not find *mala fide* in passing impugned order of transfer of the applicant by the Police Establishment Board in accordance with law. It cannot be said that the transfer order is passed on the basis of default report which is not having any substance. That apart the allegations levelled against the applicant are during his tenure of working at Parner Police Station. In the circumstances, continuation of the applicant at same Police Station will definitely prejudicial and could have been the hurdle in the further enquiry. In the circumstances as above, the facts of the cases relied upon by the learned Advocate for the applicants are different and therefore, the principles therein will not be applicable in this case.

18. In the circumstances as above, in my considered opinion, the impugned order of transfer is passed in accordance with parameters laid down in clause (a) of proviso to Sub-Section (1) of Section 22N and Section 22N(2) of the Maharashtra Police Act.

Only because there is mentioning of Section 22J(6) of Maharashtra Police Act wrongly, it cannot be said that the impugned transfer order is illegal. In view of same, I find that the impugned transfer order of the applicant is legal and proper and cannot be vitiated on any of the grounds mentioned in the application. The application, therefore, deserves to be dismissed. I, therefore, proceed to pass the following order:-

O R D E R

- (a) Accordingly, the Original Application stands dismissed.
- (b) No order as to costs.

(V.D. DONGRE)
MEMBER (J)

Place:- Aurangabad

Date :- 07.03.2022

SAS O.A.357/2020