

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.139/2023

DISTRICT:- NANDURBAR

Atmaram s/o. Magan Pradhan,
Age : 56 years, Occu. : Service as
Dy. Superintendent of Police,
Economic Offences Wing/Branch, Nandurbar,
R/o. At Somawal, Post Naigavhan,
Tq. Taloda, Dist. Nandurbar. **...APPLICANT**

V E R S U S

- 1) The State of Maharashtra,
Through: The Additional Chief Secretary,
Home Department, 2nd Floor, Main Building,
Mantralaya, Hutatma Rajguru Chowk,
Mumbai-32.
- 2) The Director General of Police,
Mumbai, Shahid Bhagatsing Marg,
Colaba, Mumbai-400 001.
- 3) The Special Inspector General of Police,
Nashik Region, Gadkari Chowk,
Nashik-422 002. **...RESPONDENTS**

APPEARANCE :Shri Kakasaheb B. Jadhav, Counsel
holding for Shri Y.B.Bolkar, Counsel
for Applicant.

:Smt. Sanjivani Ghate, Presenting
Officer for the respondent authorities.

CORAM : JUSTICE P.R.BORA, VICE CHAIRMAN

Decided on : 26-04-2023.

ORAL ORDER :

1. Heard Shri Kakasaheb B. Jadhav, learned Counsel holding for Shri Y.B.Bolkar, learned Counsel for the applicant and Smt. Sanjivani Ghate, learned Presenting Officer for the respondent authorities.

2. The applicant has challenged the order dated 13-02-2023 passed by the State Government whereby the applicant has been transferred from the post of Dy. Superintendent of Police, Economic Offences Wing, Nandurbar to the post of Dy. Superintendent of Police, Scheduled Tribe Certificates Scrutiny Committee Officer, Nashik. Vide order dated 02-12-2021, the applicant was promoted to the post of Deputy Superintendent of Police. He joined at Nandurbar on 20-12-2021. It is the grievance of the applicant that within the period of one year and few months, the applicant has been illegally transferred vide the impugned order. It is the contention of the applicant that since the normal tenure for the post of Dy. Superintendent of Police is two years at one place, he could not have been transferred when he has not completed the said tenure on the present post.

3. It is the further contention of the applicant that though the transfer order is shown to have been issued under section 22-N of the Maharashtra Police Act, 1951, no such grounds existed for his transfer under the said provision. The applicant has further contended that in order of his transfer except making mention of section 22-N nothing has been stated and as such also his transfer cannot be held to have been ordered under section 22-N. According to the applicant the transfer being in violation of the relevant provisions and more particularly of section 22-N of the Maharashtra Police Act, cannot be sustained, and he has, therefore, prayed for setting aside the said order and has also prayed for direction to reinstate him at Nandurbar on the post on which he was working.

4. The contention so raised has been resisted by the respondents. Respondent no.3 and 4 have filed joint affidavit in reply rebutting the contentions raised by the applicant in his O.A. It is the contention of the respondents that a criminal complaint has been registered against the applicant at Police Station, Taloda for the offences punishable under section 452, 323, 504, 506, 34 of IPC and the same is pending. It is further contended

that the applicant is resident of Village Somawal in Tq. Taloda, which falls in the district of Nandurbar. It is further submitted that the applicant being working as Dy. Superintendent of Police at Nandurbar, it was apprehended that investigation in the crime registered against the applicant would be influenced and there was also likelihood of tampering of the evidence at the hands of the applicant. It is also contended that such complaints are also received against the applicant. It is further contended that preliminary enquiry was conducted against the applicant and in the said preliminary enquiry, prima facie case is found against the applicant for conducting further regular enquiry against him. Along with the affidavit in reply, respondents have annexed all relevant documents about the offence registered against the applicant, preliminary enquiry conducted against the applicant and report of the said preliminary enquiry. For all aforesaid reasons, respondents have prayed for rejecting the request of the applicant and consequently the O.A. filed by the applicant.

5. I have duly considered the submissions advanced on behalf of the applicant and the respondents. It has been

argued by the learned Counsel for the applicant that in the affidavit in reply, respondents have not even whispered that the transfer of the applicant has been effected by invoking provisions under section 22-N of the Maharashtra Police Act. Learned Counsel submitted that it can be understood in the order of transfer, there may not be all necessary particulars, however, in the affidavit in reply if such particulars are not provided, then certainly an inference can be drawn that the respondents have failed in substantiating the reasons for his transfer. Learned Counsel further submitted that merely on the basis of some private complaint made against the applicant and the findings registered on the basis of the said complaint no such action can be taken against the applicant. Learned Counsel relied upon the judgment of the Hon'ble Apex Court in the case of **Somesh Tiwari V/s. Union of India & Ors, [(2009) 2 SCC 592]** and invited my attention towards paragraph 16 and 20 of the said judgment. Learned Counsel submitted that in view of the law laid down in the said judgment, the impugned order cannot be sustained. Learned Counsel has also relied upon the judgment of this Tribunal in **O.A.No.689 to 693/2022 in case of Shri Ajay Mahadev Kharade V/s. State of Maharashtra & Anr.**

decided by the Principal Seat of the Tribunal at Mumbai on 06-08-2021. Learned Counsel read out paragraph 19 of the said judgment as well as paragraph 23, 31, 32 and 34 from the said judgment. Learned Counsel contended that the facts in the present case are identical with the facts which existed in the matter before Principal Seat and in the circumstances the decision rendered and course adopted by the Principal Seat of the Tribunal is liable to be adopted in the present matter. Learned Counsel submitted that the procedure as has been prescribed under section 22-N for the midterm and mid-tenure transfer of the Police Officers has not at all been followed in the present matter and for that reason also the order of transfer in relation to the applicant impugned in the present O.A. is liable to be set aside.

6. It has also been argued by the learned Counsel that the transfer of the applicant has been influenced by one local MLA. Learned Counsel has placed on record the recommendation made by the said MLA for transfer of the applicant. Learned Counsel submitted that on paper whatever may be the reason stated by the respondents, real reason is that the transfer has been made at the

instance of the said MLA. Learned Counsel referred to the judgment of the Division Bench of the Hon'ble Bombay High Court passed in **Writ Petition No.8987/2018** in the case of **Balasaheb Vitthalrao Tidke V/s. State of Maharashtra & Anr.** decided on 12-12-2018 and submitted that the Hon'ble High Court has taken a view that transfer influenced by the political personalities if not supported by the administrative reasons has to be set aside. Learned Counsel on all above grounds prayed for setting aside the impugned order.

7. Learned P.O. reiterated the contention raised in the affidavit in reply filed on behalf of the respondent no.3 and 4 in her arguments. Referring to the documents filed along with the affidavit in reply, learned P.O. submitted that preliminary enquiry was conducted in which the charges against the applicant are found sustainable and on the basis of the said findings a detailed enquiry against the applicant has been recommended and that is the reason that he has been transferred from his existing post at Nandurbar to Nashik.

8. Learned P.O. further submitted that registration of offence against the applicant in the police station within

his jurisdiction is also another reason for shifting the applicant from Nandurbar to Nashik. Learned P.O. submitted that the applicant is resident of Village Somawal in Taloda Taluka and at the said police station crime has been registered against the applicant and his family members for the offences punishable under section 452, 323, 504, 506, 34 of IPC and the said crime is under investigation. Learned P.O. submitted that there is an apprehension that the applicant will influence the investigation and is likely to tamper prosecution evidence by using his position as a senior police officer at the district level. Learned P.O. invited my attention to the documents filed in that regard. Referring to the provision under section 22-N of the Maharashtra Police Act, learned P.O. submitted that transfer of the applicant is perfectly within the limits of the said section and has been effected after following due procedure. Learned P.O. in the circumstances prayed for rejecting the application.

9. I have duly considered the submissions advanced by the learned Counsel appearing for the applicant and the learned P.O. representing the respondents. It is not in dispute that offence has been registered against the

applicant on the basis of the incident which occurred at Village Somawal, which is the native village of the applicant and on the basis of the said incidence a crime has been registered against the applicant and his family members for the offences punishable under section 452, 323, 504, 506, 34 of IPC. The documents which are placed on record by the respondents also reveal that in the said crime and in addition to that into some other misconduct alleged against the applicant a preliminary enquiry was conducted and finding has been recorded holding the applicant guilty for the misconduct alleged against him prima facie. Report submitted by the Special Inspector General of Police of Nashik region to the Director General of Police is produced at page 75 & 76 of the paper book. The Special Inspector General of Police has recommended for further enquiry against the applicant on the basis of the findings recorded in the preliminary enquiry.

10. After having considered the above documents in context with the order of transfer and the averments taken in the affidavit in reply, there remains no doubt that the applicant has been transferred under the proviso to Section 22-N(1) of the Maharashtra Police Act. Mere non-

mentioning of the said section in the affidavit in reply or in the impugned order would not negate the facts borne out through the affidavit in reply and documents annexed with the affidavit in reply. Section 22-N of the Maharashtra Police Act, 1951 reads thus:

“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:-

<i>Police Personnel</i>	<i>Competent Authority</i>
<i>(a) Officers of the Indian Police Service</i>	<i>Chief Minister;</i>
<i>(b) Maharashtra Police Service Officers of and above the rank of Deputy Superintendent of Police.</i>	<i>Home Minister;</i>
<i>(c) Officers up to Police Inspector</i>	<i>(a) Police Establishment Board No.2;</i> <i>(b) Police Establishment Boards at Range Level,</i> <i>(c) Police Establishment Boards at Commissionerate Level</i> <i>(d) Police Establishment Boards at District Level</i> <i>(e) Police Establishment Boards 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 in incapacitated from discharging his responsibility; or*
- (e) the Police Personnel is guilty of dereliction of duty.*

11. Under proviso to sub section (1) of Section 22-N the State Government can transfer any police officer prior to

completion of his normal tenure if disciplinary proceedings are instituted or contemplated against the Police Personnel. That is the precise reason which has been given in the present matter for transfer of the applicant. It has been argued by the learned Counsel for the applicant that even in such cases, the competent authority i.e. the Home Minister of the State must have consented for such transfer and without his consent no such order could have been issued by the respondents. I do not find any substance in the submission made by the applicant. Such consent and approval is required of the competent authority if the provision under Section 22N(2) is invoked. Admittedly the transfer has not been effected of the applicant under the said provision. The State Government has given the power for effecting such transfer under proviso to Section 22N(1). In the present matter transfer order has been issued under the seal of the Hon'ble Governor by the Government in view of the fact that in preliminary enquiry conducted against the applicant, he has been held prima facie guilty for the misconduct alleged against him and further that regular departmental enquiry is recommended against him. Transfer of the applicant, since falls under the proviso to Section 22N(1) of the

Maharashtra Police Act, it is well within the competence of the State Government to effect such transfer.

12. Learned Counsel for the applicant has relied on the judgment of the Hon'ble Apex Court in the case of **Somesh Tiwari V/s. Union of India & Ors** (cited supra). There cannot be dispute about the ratio laid down in the aforesaid judgment. However, having considered the facts existing in the case in hand, it does not appear to me that the said ratio would apply in the facts of the present case. In the case of **Somesh Tiwari**, order of transfer was passed on material which was not existent and that was the reason that the said order was not sustained. In the instant matter, the preliminary enquiry has been conducted and the report submitted of the said preliminary enquiry reveals that there is substance in the allegations raised against the applicant.

13. Another judgment relied on behalf of the applicant in the case of **Shri Ajay Mahadev Kharade V/s. State of Maharashtra & Anr.** (cited supra), also may not apply to the facts of the present case for the reason that in the case of Ajay Kharade no substance was found in the complaint made by one Sagar Suryawanshi and despite that the said

complaint was used for transfer of the applicant. Judgment in the case of **Balasaheb Vitthalrao Tidke V/s. State of Maharashtra & Anr.**, (cited supra) is not relevant so far as the facts in the present matter are concerned. It does not appear to be the case that the applicant has been transferred at the instance of learned MLA or any other political personality.

14. After having considered the entire facts and circumstances existing in the present matter, I do not find any substance in the contentions so raised in the present application and the prayers made therein. In the result, following order is passed:

ORDER

Original Application is dismissed, however, without any order as to costs.

VICE CHAIRMAN

Place : Aurangabad
Date : 26.04.2023.