

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NOS.284 TO 287 OF 2021

DISTRICT : MUMBAI

ORIGINAL APPLICATION NO.284 OF 2021

Shri Nandkumar M. Gopale.)
Police Inspector, Park Site Police Station,)
Mumbai and residing at 103,)
Chandramalika Worli Police Camp,)
Mumbai – 400 031.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Addl. Chief Secretary,)
Home Department, Mantralaya,)
Mumbai – 400 032.)
2. The Director General of Police.)
Old Council Hall, Kulaba, Mumbai.)...**Respondents**

WITH

ORIGINAL APPLICATION NO.285 OF 2021

Shri Sachin Murari Kadam)
Age : 51 Years, Police Inspector, Deonar)
Police Station, Deibar and residing at)
4/30, Naigaon Police Officers Quarters,)
G.D. Ambekar Marg, Opp. Naigaon Police)
Hospital, Mumbai.)...**Applicant**

Versus

1. The State of Maharashtra & Anr.)...**Respondents**

WITH

ORIGINAL APPLICATION NO.286 OF 2021

Shri Kedari Krishna Pawar.)
Police Inspector, Versova Police Station)
Residing at New Police Officers Quarters,)
Building No.3, Flat No.803, Wireless)
Compound, Linking Road, Santacruz (W),)
Mumbai.)...**Applicant**

Versus

1. The State of Maharashtra & Anr.)...**Respondents**

AND

ORIGINAL APPLICATION NO.287 OF 2021

Shri Sudhir Dattaram Dalvi.)
Police Inspector, Malad Police Station,)
Goregaon Division, Mumbai and Residing)
At B/703, Shivshrushti Mahavir Nagar,)
Link Road, Kandivali (W),)
Mumbai 400 067.)...**Applicant**

Versus

1. The State of Maharashtra & Anr.)...**Respondents**

Mr. M.D. Lonkar, Advocate for Applicants.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents.

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

DATE : 03.06.2021

JUDGMENT

1. Being aggrieved by the transfer order dated 04.05.2021 (individual orders), the Applicants who are serving in the cadre of Police Inspector in Mumbai have filed these O.As invoking Section 19 of Administrative Tribunals Act, 1985. Since issue for consideration is same, all these O.As are decided by common Judgment.
2. Since there is little difference as regard postings, promotions and tenure, the facts of each O.A. needs to be set out in brief.
3. Facts of O.A.No.284/2021 are as under :-

In this O.A, the Applicant has challenged the order dated 04.05.2019 whereby he was transferred from Park Site Police Station, Mumbai City to Police Training Centre, Jalna quoting Section 22N of Maharashtra Police Act. Admittedly, the Applicant was appointed as Police Sub-Inspector by direct recruitment in the year 1993 and after completing of training at Nashik, he was posted in Mumbai. His posting and tenure in Mumbai Police Commissionerate is as follows :-

In the capacity of	period	places
As P.S.I.	14.09.93 to 13.09.94	For the basic training of P.S.I. at M.P.A. Nashik
	14.09.94 to 18.11.2007	Mumbai Police Commissionerate
As A.P.I.	20.11.2007 to 09.04.2012	Mumbai Police Commissionerate
As P.I.	11.04.2012 to 06.05.2021	Mumbai Police Commissionerate

4. Facts of O.A.No.285/2021 are as under :-

In this O.A, the Applicant has challenged the order dated 04.05.2019 whereby he was transferred from Deonar Police Station, Mumbai City to TRTI, Aurangabad quoting Section 22N of Maharashtra Police Act. He was appointed as Police Sub-Inspector by direct recruitment in the year 1995 and after completion of training joined Mumbai Police Commissionerate. The details of his posting and tenure is as follows :-

In the capacity of	period	places
As P.S.I.	31.03.1995 to 31.03.1996	For the basic training of P.S.I. at M.P.A. Nashik
	01.04.1996 to 19.11.2007	Mumbai Police Commissionerate
As A.P.I.	20.11.2007 to 09.07.2014	Mumbai Police Commissionerate
As P.I.	10.07.2014 to 09.05.2021	Mumbai Police Commissionerate

5. Facts of O.A.No.286/2021 are as under :-

In this O.A, the Applicant has challenged the order dated 04.05.2019 whereby he was transferred from Varsova Police Station, Mumbai City to Police Training Centre, Nanvij, District Pune. He was selected as Police Sub-Inspector by direct recruitment in the year 1993 and after completion of training joined Mumbai Police Commissionerate in 1994. The details of his posting and tenure is as follows :-

In the capacity of	period	places
As P.S.I.	14.09.93 to 14.09.94	For the basic training of P.S.I. at M.P.A. Nashik
	14.09.94 to 29.11.2007	Mumbai Police Commissionerate
As A.P.I.	30.11.2007 to 20.07.2011	Mumbai Police Commissionerate
As P.I.	21.07.2012 to 06.05.21	Mumbai Police Commissionerate

6. Facts of O.A.No.287/2021 are as under :-

In this O.A, the Applicant has challenged the order dated 04.05.2019 whereby he was transferred from Malad Police Station, Mumbai City to Police Training Centre, Nanvij, District Pune referring Section 22N of Maharashtra Police Act. He was appointed as Police Constable in 1985 and then selected as Police Sub-Inspector through MPSC in 1995. After completion of training at Police Training Centre, he joined Mumbai Police Commissionerate in the year 1996. The details of his posting and tenure is as follows :-

In the capacity of	period	places
As P.S.I.	01.04.95 to 30.03.96	For the basic training of P.S.I. at M.P.A. Nashik
	01.04.1996 to 24.01.2009	Mumbai Police Commissionerate
As A.P.I.	25.01.2009 to 10.10.2013	Mumbai Police Commissionerate
As P.I.	11.11.2013 to 06.05.21	Mumbai Police Commissionerate

7. Thus, in all these O.As, the Applicants are transferred by PEB-2 headed by Respondent No.2 – Director General of Police citing administrative ground namely completion of tenure in Mumbai Commissionerate for transfer invoking Section 22N of Maharashtra Police Act.

8. Shri M.D. Lonkar, learned Advocate for the Applicants sought to assail the impugned transfer orders on the following grounds :-

(a) Though the impugned transfer orders are issued in the month of May, 2021 since none of the Applicant has completed 8 years fresh tenure in Mumbai Police Commissionerate from the date of their last posting/transfer in concerned Police Station, these transfer orders assumes the character of mid-tenure transfer and in absence of any such special case or public interest as

contemplated under Section 22N(2) of Maharashtra Police Act, these transfer orders are bad in law.

(b) The Respondent No.2 – Director General of Police, State of Maharashtra has adopted pick and choose policy by transferring the Applicants only though there are several Police Personnel who have over-stayed in Mumbai Police Commissionerate for tenure more than the tenure of the Applicants, and therefore, the impugned transfer orders are colourable exercise of powers.

(c) One of the Member of PEB-2 viz. Secretary, Home Department was the only independent Member in PEB, but he was not consulted to and in absence of any such consultation or approval from him, the decision of PEB-2 is arbitrary and vitiated.

9. The learned Advocate for the Applicant in this behalf referred to the decision of Hon'ble Supreme Court in **(2006) 8 SCC 1 [Prakash Singh & Ors. Vs. Union of India & Ors.]** and certain earlier decisions rendered by this Tribunal in **O.A.No.505/2016 (Ravindra B. Badgujar Vs. State of Maharashtra) decided on 09.08.2016, O.A.No.466/2016 (Arun Pawar Vs. State of Maharashtra) decided on 12.07.2016 and O.A.No.69/2015 (Rajiv Singh Parmar Vs. State of Maharashtra) decided on 19.03.2015.**

10. Per contra, Mrs. K.S. Gaikwad, learned Presenting Officer in reference to common reply in Affidavit filed by Respondent No.2 canvassed that the Applicants have already served for more than 25 years in Mumbai Police Commissionerate as against stipulated period of 8 years in Mumbai Police Commissionerate and were overdue for transfer and accordingly, the transfer orders were issued by PEB-2 in the month of May, 2021 i.e. the period in which general transfers are required to be issued and this is not a case of mid-tenure transfer attracting Section 22N(2) of Maharashtra Police Act. She further submits that the transfer being an incidence of service, the Applicants have no vested right to

remain posted at one place and in absence of any malafides, the Tribunal should not interfere in the matter of transfer in its limited judicial powers of review.

11. The learned P.O. in order to substantiate her submission placed reliance on following decisions :-

- (i) Somesh Tiwari Vs. Union of India & Ors. [(2009)2 SCC 592;
- (ii) National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan & Anr. [(2001) 8 SCC 574];
- (iii) State of U.P. & Anr. Vs. Siya Ram & Anr. [(2004) 7 SCC 405];
- (iv) State of M.P. & Anr. Vs. S.S. Kourav & Ors. [(1993) 3 SCC 270]
- (v) Judgment of Hon'ble High Court in Writ Petition No.4827 of 2010 [Shankarrao N. Jadhav Vs. State of Maharashtra] decided on 14th October, 2010.
- (vi) Judgment of Hon'ble High Court Bench at Aurangabad in Writ Petition No.5320/2018 [Ashok R. Barde Vs. State of Maharashtra] decided on 22nd December, 2018.

12. The legal principles culled out from the above mentioned Judgments in the matter of transfer are as follows :-

- (i) The courts should not interfere with the transfer orders which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any statutory rule or on the grounds of *mala fides*.
- (ii) A Government servant holding a transferable post has no vested right to remain posted at one place or the other. Transfer order issued by a Competent Authority does not violate any of his legal rights.
- (iii) Who should be transferred where, is a matter for the appropriate authority to decide. Unless the transfer order is vitiated by mala fides and is made in violation of any statutory provisions, the court cannot interfere with it.
- (iv) Transfer of an employee is not only an incidence inherent in the terms of the appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra in the law governing or conditions of service.

(v) Transfer made even in transgression of administrative guidelines cannot also be interfered with, as it does not confer any legally enforceable rights unless it is shown to be vitiated by mala fides or made in violation of any statutory provision and so long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments.

(vi) The courts should not deal with transfer orders as if they are appellate authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. They cannot substitute their own decision in the matter of transfer for that of competent authorities of the State. Even allegations of mala fides when made must be such as to inspire confidence in the court or based on concrete materials.

(vii) Allegation of mala fides should not be entertained on the mere making of it or on consideration borne out of conjectures or surmises.

(viii) Except for strong & convincing reasons no interference could ordinarily be made with an order of transfer.

13. In the present matters, we are dealing with transfer orders issued invoking provisions of Maharashtra Police Act which *inter-alia* provides complete mechanism to regulate the transfers of Police Personnel. Suffice to say, in the wake of amendment in Maharashtra Police Act pursuant to directions given by Hon'ble Supreme Court in **Prakash Singh's** case, transfers are controlled and regulated by Maharashtra Police Act and not left to the whims and caprice of executives. In **Prakash Singh's** case, the Hon'ble Supreme Court issued various directions for separation of Investigation Wing, formation of PEB, establishment of Police Complaints Authority, establishment of National Security Commission amongst others. In Para No.5 of the Judgment, the Hon'ble Supreme Court directed for establishment of PEB with which we are concerned in the present matter. Para No.5 is as follows :-

“5. *There shall be a Police Establishment Board in each State which shall decide all transfers, postings, promotions and other service related matters of officers of and below the rank of Deputy Superintendent of Police. The Establishment Board shall be a departmental body comprising the Director General of Police and four other senior officers of the Department. The State Government may interfere with decision of the Board in exceptional cases only after recording its reasons for doing so. The Board shall also be authorized to make appropriate recommendations*

to the State Government regarding the posting and transfers of officers of and above the rank of Superintendent of Police, and the Government is expected to give due weight to these recommendations and shall normally accept it. It shall also function as a forum of appeal for disposing of representations from officers of the rank of Superintendent of Police and above regarding their promotion/transfer/disciplinary proceedings or their being subjected to illegal or irregular orders and generally reviewing the functioning of the police in the State.”

14. Apart, in order to decide the issue involved in the matter, it is necessary to have a glance at the relevant provisions of Maharashtra Police Act which are introduced pursuant to the directions given in **Prakash Singh’s** case.

15. Section 2(6B) defines “mid-term transfer” as under :-

“mid-term transfer” means transfer of a Police Personnel in the Police Force other than the General Transfer.

Section 2(11B) defines “post” as under :-

“post” means any post created on the establishment of Director General and Inspector General of Police and includes the posts assigned for Police Personnel on State or Central deputation.

Section 2(14-1) defines “Specialized Agencies” as under :-

“Specialized Agencies” means Crime Investigation Department, State Intelligence Department, Protection of Civil Rights, Anti-Corruption Bureau, State Reserve Police Force, Anti-Terrorist Squad, Highway Traffic and Training Directorate.

Section 22E provides for the establishment of “Police Establishment Board No.2” which is as under :-

22E. Police Establishment Board No.2

(1) The State Government shall, by notification in the Official Gazette, constitute for the purposes of this Act, a Board to be called the Police Establishment Board No.2.

(2) The Police Establishment Board No.2 shall consist of the following members, namely :-

- (a) Director General and Inspector General of ... Chairperson;
Police
- (b) Director General, Anti-Corruption Bureau ... Member;
- (c) Commissioner of Police, Mumbai;

- (d) Additional Director General and Inspector ... Member;
General of Police (Law and Order)
- (e) Secretary or Principal Secretary, as the ... Member;
Case may be (Appeal and Security)
- (f) Additional Director General and Inspector ... Member-
General of Police (Establishment) Secretary

Section 22N provides for “Normal tenure of Police Personnel, and Competent Authority as under :-

“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.]”

Section 22N(2) provides for mid-term transfer of Police Personnel which is as under :-

(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) <u>Police Personnel up to the rank of Police Inspector for transfer out of the respective Range or Commissionerate or Specialized Agency</u> <u>Police Establishment Board No.2;</u>
(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 Inspector for 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 mine]

16. Thus, there is no denying that PEB-2 is the competent authority for transfer of the Applicants out of Commissionerate or Specialized Agency. At this juncture, it would be apposite to reproduce the minutes of PEB-2 which recommended for transfer of the Applicants being found overdue for transfer. The minutes of PEB are in vernacular and are as follows :-

“खालील अ. क्र. १ ते ४ वरील नमूद निःशस्त्र पोलीस निरीक्षक यांचा संपूर्ण अखंडीत सेवाकालावधी हा मुंबई शहर घटकात झालेला आहे. त्याचप्रमाणे अ.क्र. ५ वरील निःशस्त्र पोलीस निरीक्षक यांचा महाराष्ट्र पोलीस अधिनियम क्रमांक ११, दि. ०६. ०४.२०१५ अन्वये घटकातील विहित कालावधी पूर्ण झालेला आहे. यास्तव, महाराष्ट्र पोलीस कायदा-१९५१, कलम-२२न अन्वये प्राप्त अधिकाराचा वापर करून पोलीस आस्थापना मंडळ क्र. २ यांनी विचार करून चक्राकार पध्दतीने उपरोक्त पोलीस निरीक्षक यांच्या नावापुढे दर्शविलेल्या घटकात प्रशासकीय कारणास्तव बदली करण्यास सर्वांनुमते मान्यता दिली आहे.

अ. क्र.	अधिका-याचे नाव	सध्याची नेमणूक	शेरा	बदलीचा घटक
१.	श्री. नंदकुमार मारुती गोपाळे	बृहन्मुंबई	बृहन्मुंबई - २६ वर्षे, ७ महिने (अखंडीत सेवा कालावधी बृहन्मुंबई येथे)	पो.प्र.कॅ. जालना
२.	श्री. सुधीर दत्ताराम दळवी	बृहन्मुंबई	बृहन्मुंबई - २५ वर्षे (अखंडीत सेवा कालावधी बृहन्मुंबई येथे)	पो.प्र.कॅ. नानविज
३.	श्री. सचिन मुराराई कदम	बृहन्मुंबई	बृहन्मुंबई - २५ वर्षे (अखंडीत सेवा कालावधी बृहन्मुंबई येथे)	टी.आर.टी.आय. औरंगाबाद
४.	श्री. केदारी कृष्ण पवार	बृहन्मुंबई	बृहन्मुंबई - २६ वर्षे, ७ महिने (अखंडीत सेवा कालावधी बृहन्मुंबई येथे)	जि.जा.प्र.त.स. जळगाव

17. Notably, there is no denying that all the Applicants have rendered more than 25 years' service in Mumbai. They were initially appointed as PSI and immediately after training, posted in Mumbai Police Commissionerate. Their tenure is already reproduced in Para No.3 of the Judgment as above. The Applicant in O.A.Nos.284 and 287/2021 were continuously in Mumbai Police Commissionerate whereas Applicant in O.A.Nos.285 and 286/2021 were deputed and served for some period in ATS at Mumbai.

18. In view of submissions advanced at the Bar, the question posed for consideration is whether the impugned transfer orders could be termed mid-tenure transfer or whether the Applicants have completed normal statutory tenure so as to construe the impugned transfer orders as a general transfer and legal one.

19. The details of posting and tenure of Applicants in Mumbai Police Commissionerate as set out in the earlier part of the Judgment is not at all in dispute. Indisputably, all the Applicants have completed more than 25 years' tenure in Mumbai City. The normal tenure of Police Personnel cadre wise is defined in Section 22N(1) of Maharashtra Police Act as reproduced above. Here we are concerned with Section 22N(1)(d)

since the transfers are from Commissionerate area. As per this provision, for Police Officers of the rank of Police Sub-Inspector, Assistant Police Inspector and Police Inspector, the normal tenure shall be six years at Commissionerate other than Mumbai and 8 years at Mumbai Commissionerate. The Applicant in O.A.No.284/2021 is in Mumbai as P.I. since 11.04.2012. Even prior to it also, he was in Mumbai as PSI from 14.09.1994 to 18.11.2007, and thereafter, as API in Mumbai from 20.11.2007 to 09.04.2012. As such, the Applicant is in Mumbai for more than 24 years as PSI, API and PI. Indeed, his tenure as PI in Mumbai Police Commissionerate is also more than 8 years and had completed 8 years' tenure in the capacity of PI and was overdue for transfer in terms of Section 22N(1)(d) of Maharashtra Police Act.

20. Whereas, Applicant in O.A.No.285/2021 was PSI in Mumbai from 1996 to 2004 and from July, 2004 to June, 2013, he was attached to ATS, Mumbai. While in ATS, he was promoted to the post of API. Thereafter in 2014, he was promoted to the post of PI and posted in Crime Branch (Page No.13 of PB of O.A.). As such, if the service of the Applicant in the cadre of PSI, API and PI is taken together, admittedly, it comes more than 25 years in Mumbai.

21. Whereas Applicant in O.A.286/2021 was PSI in Mumbai from 1994 upto 2006 at various Police Stations and branches. In 2007, he was promoted from PSI to API and in 2010, he was attached to ATS, Mumbai and posted at Mumbai. He served in ATS from 2012 to 2015. Then in 2015, he was reposted at Bandra Police Station. Later, he was posted at Naigaon, Juhu Police Station and MIDC Police Station. As such, if his tenure in the cadre of PSI, API and PI is considered, he is in Mumbai for more than 25 years though in different cadres [Page No.24 of O.A.].

22. Lastly, in O.A.No.287/2021, the Applicant served as PSI in Mumbai Commissionerate from 1996 to 2009. Thereafter, he was promoted in the post of API and served in Mumbai Police

Commissionerate from 2009 to 2013. He was promoted to the post of PI on 11.11.2013 and served in Mumbai Police Commissionerate till the date of impugned transfer order dated 06.05.2021. Thus, in this O.A. also, if the Applicant's tenure is taken together though in different cadre, it comes to more than 25 years.

23. Shri M.D. Lonkar, learned Advocate for the Applicant, however, sought to contend that fresh period of 8 years' tenure has to be counted from the last date of transfer/posting of the Applicant, and therefore, the Applicant cannot be said due for transfer. He has pointed out that the last posting of Applicant in O.A.No.284/2021 by order dated 23.03.2021 was at Parksite Police Station from Crime Branch. In O.A.No.285/2021, the last transfer and posting of the Applicant by order dated 23.03.2021 was at Deonar from Crime Branch Police Station. In O.A.No.286/2021, the last posting of the Applicant by order dated 23.03.2021 was at Varsova Police Station from Crime Branch. Whereas, in O.A.No.287/2021, the Applicant's last transfer and posting was at Malad from Kandivali by order dated 14th July, 2018. True, the Applicants have not completed 8 years' tenure from these transfer orders and posting at respective Police Stations.

24. Admittedly, all these transfers were within Police Commissionerate area. If the Applicants were subjected to transfer from one Branch/Police Station to another Branch/Police Station in Mumbai Commissionerate area itself, one need to consider their entire period of posting in Commissionerate area and not in piecemeal or disjunctively. Thus, if the term 'post' defined in Section 2(11B) of the Act is taken into conjunction with Section 22N(1)(e) of Maharashtra Police Act with reference to definition of 'General Transfer', there is no escape from the conclusion that one need to consider all these postings together and if the tenure is more than 8 years in Mumbai Police Commissionerate irrespective of in-between transfers from one Police Station to another

Police Station, then such Police Personnel has to be considered due for transfer.

25. Under the provisions of Maharashtra Police Act, what is protected is minimum tenure in Police Commissionerate. The object of legislature seems to be two-fold. First, the Police Personnel should serve honestly without fear of transfer from unwanted political interference and secondly, he should not over-stay for a long period at one place in Commissionerate, so that the possibility of creation of vested interest due to more acquaintance with people, etc., which would be harmful to governance, is kept at bay.

26. If the interpretation suggested by Shri Lonkar, learned Advocate that the Applicants were entitled to fresh 8 years' posting from their last transfer/posting for considering them due for general transfer is accepted, it would render provisions of Act nugatory and secondly, Police Personnel will remain in Mumbai Police Commissionerate area for his entire service and Police Personnel from other places outside Mumbai will not get posting in Mumbai Police Commissionerate. Suffice to say, the interpretation suggested by the learned Advocate for the Applicant is fallacious and misconceived.

27. Suffice to say, in terms of Section 22N(1)(d), the normal tenure of Police Personnel in the rank of PSI, API and PI shall be 8 years in Mumbai Police Commissionerate. Thus, the harmonious construction of Section 22(1)(d) is that one need to consider entire tenure irrespective of rank and in between transfer from one post to another in Mumbai Police Commissionerate and if it is more than 8 years, then such Police Personnel has to be considered due for transfer.

28. In this behalf, it would be apposite to refer the decision of Hon'ble High Court Bench Aurangabad in **Ashok Barde's** matter (cited supra) where in similar situation, the entire tenure of Petitioner therein at

Aurangabad was considered irrespective of his *inter-se* transfers to different Branches/Police Stations for completion of 5 years' normal tenure and due for general transfer. In Para No.16, the Hon'ble High Court held as under :-

“16. For one more reason, we are not inclined to interfere with the impugned order. Admittedly, the petitioner had been serving at Aurangabad since 2008 to the date of his transfer i.e. 31st May, 2017. The petitioner, thus, had been serving at Aurangabad for little over eight years. For constabulary, a normal tenure is of five years at one place of posting. The term "place of posting" has not been defined in the Act. True, if the terms "place" and "post" defined in the Act are taken in conjunction and interpreted with reference to the term "General Transfer", it may cover the transfer from one post, office or Department to another post, office or Department at same station. If such an interpretation is resorted to, it may lead to absurd results, as has happened in the case in hand. The petitioner was first transferred to Aurangabad (Rural) Police Force in the year 2008. In 2014, he was promoted as Head Constable in the very office. On his request, he was transferred to the Traffic branch, Aurangabad in June, 2016. With reference to the aforesaid interpretation, the petitioner wanted to contend that his five year tenure envisaged under Section 22N(1)(b) would commence from the day he joined his duties with the Traffic Branch in June, 2016, meaning thereby, he would have become due for transfer in June, 2021. If the submission advanced by the learned counsel for the petitioner is accepted, it would stymie desire of other police personnel serving in Moffusil, to come to the district headquarters on transfer. The place of posting has, therefore, to mean that a particular town or city, whereas an incumbent is posted irrespective of the fact of he having served with very many branches of the same department at various places in the same town or city.”

29. As regard O.A.Nos.285/2021 and 286/2021, Shri Lonkar, learned Advocate for the Applicant sought to contend that in both the O.As, for some time, the Applicants were posted in ATS, Mumbai and ATS being specialized independent agency, the said period cannot be counted as service tenure under Mumbai Police Commissionerate. He has pointed out that in O.A.No.285/2021, the Applicant was in ATS from 2004 to 2013 as PSI as well as API. Whereas in O.A.No.286/2021, the Applicant was in ATS from 2010 to 2015 as API and PI. The learned Advocate for the Applicant has placed on record the G.R. dated 27th July, 2009 and G.R. dated 14th June, 2010 whereby the sanctioned posts created for ATS were brought under the control of Additional Director General of Police, ATS, Mumbai. According to G.R. dated 14.06.2010, though ATS

squads were created at Pune, Nagpur, Aurangabad, Nanded, Nashk and Akola, the Police Personnel in the said squads were directly brought under the control of Director General of Police, ATS, Mumbai by deleting them from earlier concerned establishment of Police Commissioner/Superintendent of Police. Thus, it appears that Police Personnel who were on the establishment of Police Commissioner or Superintendent of Police but working in ATS were directly brought under the administrative control of Director General of Police, ATS, Mumbai. In my considered opinion, this aspect is of little help to the Applicant since admittedly, the Applicants were posted in Mumbai ATS in Mumbai Police Commissionerate area though they were directly under the control of Additional Director General of Police, ATS, Mumbai. As such, even if for some period, the Applicant's posting was in ATS had remains that they worked in Mumbai Police Commissionerate area. In this behalf, it may be noted that as per Section 2(11B), 'post' means any post created on the establishment of Director General and Inspector General of Police and also includes the posts assigned for Police Personnel of State or Central deputation. In other words, the Applicant's posting in ATS was on deputation.

30. Apart, the normal tenure for Police Personnel in specialized agency would be three years, as specifically provided in Section 22N(1)(e) of Maharashtra Police Act which specifically provides that Police Officers of the rank of PSI, API and PI in specialized agencies, the normal tenure shall be of three years. The Applicants in O.A.No.285/2021 and 286/2021 have admittedly worked in ATS for more than three years during their tenure in 2004 to 2013 and 2010 to 2015 respectively. In other words, at the end of 2013 and 2015 itself, they were due for transfer from ATS. That time, instead of transfer outside Mumbai, they were transferred on the establishment of Police Commissionerate, Mumbai and served at different Police Stations/Branches of the Department.

31. Significant to note that the impugned transfer orders were passed on 04.05.2021 i.e. in the month of May as a general transfer. As stated above, as per Section 2(6)(a) of Maharashtra Police Act, the 'general transfer' means posting of Police Personnel from one post to another post in the month of April or May of every year after completion of normal tenure as mentioned in Sub-section 1 of Section 22N of Maharashtra Police Act. Section 22N(2) applies in case of mid-term transfer in exceptional cases, in public interest and on account of administrative exigencies. Whereas, present case is of general transfer since Applicants were overdue. This being the position, the submission advanced by the learned Advocate for the Applicants that the impugned transfer orders are mid-tenure transfer is contrary to letter and spirit of Maharashtra Police Act and holds no water.

32. Shri Lonkar, learned Advocate for the Applicant further sought to assail the impugned transfer orders contending that Respondents have adopted pick and choose policy by transferring Applicants only without touching other Police Personnel who are overdue and in Mumbai for a period longer than the Applicants. In this behalf, he has filed the list of 54 Police Inspectors serving in Mumbai City since 2007 onwards. The learned P.O. could not controvert this position that there are various other Police Personnel overstaying in Mumbai. Ideally, the Respondent No.2 – Director General of Police ought to have prepared the seniority list of the Police Personnel serving in Mumbai Police Commissionerate area and to take appropriate place for their transfers who have completed their normal tenure. However, this aspect *ipso-facto* will not render the impugned transfer order illegal in absence of any *malafides* in transfer order.

33. The learned Advocate for the Applicant has further invited my attention to the Circular issued by Respondent No.2 dated 18.03.2021 whereby information was called for transfer of Police Personnel who would be due for transfer in general transfer in terms of provisions of

Maharashtra Police Act. According to learned Advocate for the Applicant, without waiting for the concrete proposal of all Police Personnel who are due for general transfer, the Respondent No.2 hastily transferred Applicants only selectively and it amounts to colourable exercise of powers.

34. Only because there was no complete proposal for transfer of all Police Personnel who were due for transfer from Mumbai Police Commissionerate area, that aspect itself could not render the impugned transfer order illegal in absence of any malafides.

35. The learned Advocate for the Applicants further sought to assail the legality of minutes of PEB contending that Additional Chief Secretary, Home Department was the only independent Member in PEB but not consulted and in absence of his approval, the decision taken by Police Personnel only is invalid in law. In this behalf, he sought to refer the decisions in O.A.No.505/2016, 466/2016 and O.A.No.691/2015. I have gone through these decisions which pertained to mid-term transfer and absence of one of the Member of PEB amongst other ground held illegal. In the present case, we are dealing with general transfer orders and not mid-tenure transfer orders. Therefore, these decisions are of no help to him.

36. The PEB-2 was consists of 06 Members headed by Director General of Police. The approval of transfer was taken in circulation. Ideally, it should have been in congregation so that there could be deliberation and discussion. Be that as it may, the fact remains that signasture of one of the Member i.e. Additional Chief Secretary, Home Department is not forthcoming on the minutes of PEB. He appears not consulted. Indeed, the Respondent No.2 ought to have sent file to him for his remark/approval, as the case may be, so that there is consultation and deliberations with all the Members of PEB. However, in my considered opinion, when minutes of PEB are signed and approved by remaining 5

Members, the absence of one Member in a meeting/non-consultation will not render transfer order illegal. Needless to mention that the establishment of PEB is necessarily in-house mechanism based upon the recommendations of Hon'ble Supreme Court in **Prakash Singh's** case. The provisions of Transfer Act 2005 nowhere provides for the Corum of PEB. In absence of any such provision or Rule fixing Corum of PEB, the decision taken by 5 Members of PEB in absence of one Member cannot be termed 'illegal'. Normally, the decisions in Committee/PEB are required to be taken by majority. As such, even if one of the Members is dissenting majority view always prevails. In absence of any material, it cannot be assumed that Additional Chief Secretary was in dissenting mood. As such, considering the aspect from this angle also, non-consultation with Additional Chief Secretary, Home Department would not render transfer order illegal. In any case, it is not at all fatal to the legality of impugned transfer orders.

37. The totality of aforesaid discussion leads me to conclude that the Applicants were overdue for transfer from Mumbai Police Commissionerate and challenge to the transfer order is devoid of any merits. The O.A., therefore, deserve to be dismissed.

38. Before parting, it is necessary to consider the G.R. issued by Government of Maharashtra on 10th May, 2021 through GAD whereby the Government of Maharashtra postponed the general transfers of 2021 which were due in April till 30th June, 2021 in view of Covid-19 pandemic situation in the State. Whereas, in the present matter, the Applicants were transferred by Respondent No.2 on 04.05.2021 i.e. before six days of G.R. dated 10.05.2021. This G.R. seems to have been issued in the interest of Government servant, so that they should not be subjected to transfer and shifting in Covid-19 pandemic situation. Since transfer orders are issued before issuance of G.R, those are unaffected. However, it would be desirable that Respondent No.2 shall consider the difficulties of the Applicants for joining new place of posting in this

Covid-19 pandemic situation. The Applicants, therefore, are at liberty to make representation to Respondent No.2 for grant of joining time in terms of G.R. dated 10.05.2021 and on receipt of representation, the Respondent No.2 shall pass appropriate orders considering the difficulties of the Applicants for travelling and shifting in pandemic situation. With this, I proceed to pass the following order.

ORDER

All these Original Applications stand dismissed with no order as to costs.

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

Mumbai
Date : 03.06.2021
Dictation taken by :
S.K. Wamanse.

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