

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NOS.453 TO 456 OF 2016

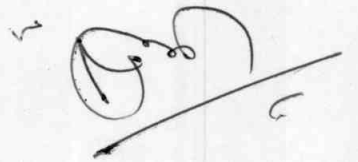
DISTRICT : THANE

ORIGINAL APPLICATION NO.453 OF 2016

Shri D.D. Shivthare.)
Age : 55 Yrs, Working as Senior Police)
Inspector, Narpoli Police Station, Thane)
City Police Commissionerate and residing)
at A/203, Sohan Towers, Khopat,)
Thane (W).)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Addl. Chief Secretary,)
Home Department, Mantralaya,)
Mumbai - 400 032.)
2. The Director General & Inspector)
General of Police, M.S, Mumbai,)
Having Office at Old Council Hall,)
Shahid Bhagatsingh Marg,)
Mumbai 400 039.)
3. The Commissioner of Police.)
Thane, Having Office at Thane.)...**Respondents**



WITH

ORIGINAL APPLICATION NO.454 OF 2016

Shri D.S. Suryawanshi.)
 Age : 57 Yrs, Working as Senior Police)
 Inspector at Bajarpeth Police Station,)
 Kalyan, Dist : Thane, R/o. Shivshankar)
 Plaza, Flat No.901-902, Sector-8, Airoli,)
 Navi Mumbai.)...**Applicant**

Versus

1. The State of Maharashtra & 2 Ors.)...**Respondents**

WITH

ORIGINAL APPLICATION NO.455 OF 2016

Shri S.B. More.)
 Age : 35 Yrs, Working as Assistant)
 Police Inspector at Bajarpeth Police)
 Station, Kalyan (W), Dist : Thane,)
 R/o. Vasant Park, Cherry Blossom Bldg,)
 A-Wing, Room No.302, Gandhari Road,)
 Kalyan (W), Dist : Thane.)...**Applicant**

Versus

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1. The State of Maharashtra & 2 Ors.)...**Respondents**

WITH

ORIGINAL APPLICATION NO.456 OF 2016

Shri S.D. Gaikwad.)
 Age : 51 Yrs, Working as Senior Police)
 Inspector at Kopar Khairane Police Station)
 Navi Mumbai and Residing at Santosh)
 Apartment, Room No.38, MIDC,)
 Dombivali (E), Dist : Thane.)
Address of Service of Notice :)
 Shri B.A. Bandiwadekar, Advocate,)
 Having Office at 9, "Ram-Krishna",)
 Lt. Dilip Gupte Marg, Mahim,)
 Mumbai 400 016.)...**Applicants**

Versus

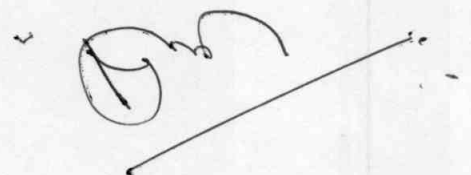
1. The State of Maharashtra & 2 Ors.)...**Respondents**

Shri B.A. Bandiwadekar, Advocate for Applicants.

Shri K.B. Bhise, Presenting Officer for Respondents.

P.C. : R.B. MALIK (MEMBER-JUDICIAL)

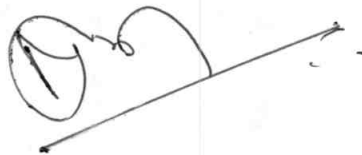
DATE : 13.10.2016



JUDGMENT

1. These four Original Applications (OAs) challenge the orders of transfers of one Senior Police Inspector (Sr. P.I), one Assistant Police Inspector (API) and two Police Inspectors (PIs). In so far as the Applicants in the cadre of PI are concerned, they came to be transferred by the order of 24th May, 2016 while by an order of the same date, but separately made, Shri More, API came to be transferred. These facts are such as to be fully governed by a detailed earlier common Judgment made by me in **OA 466 and 467/2016 (Shri Arun R. Pawar Vs. State of Maharashtra and 2 others and one other OA, dated 12.7.2016)**. Those two original Applicants also figured in the same transfer order which is herein impugned whereby as many as 70 Officers of the rank of PI came to be transferred. That being the state of affairs, these four OAs are also hereby disposed of by this common Judgment.

2. I have perused the record and proceedings and heard Mr. B.A. Bandiwadekar, the learned Advocate for the Applicants and Mr. K.B. Bhise, the learned Presenting Officer for the Respondents.

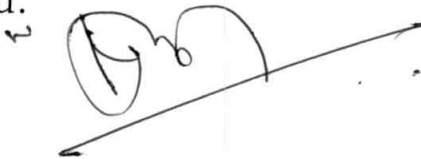


3. In the first three OAs, the Affidavit-in-reply has been filed by Shri Rajkumar M. Vhatkar, Special Inspector General of Police (Establishment) while in the remaining OA, the said Affidavit was filed by a Desk Officer Shri Anil P. Sawant who filed the Affidavit-in-reply even in **Arun Pawar** (supra). Mr. Vhatkar's Affidavit-in-reply in Paras 10 & 11 makes it clear that in case of the Applicants herein, they had not completed the normal tenure, and therefore, this case will have to be examined from the stand point of mid-tenure transfer. In so far as the OAs in which Mr. Vhatkar has filed his Affidavit-in-reply, it would become very clear that it was under his signature that the impugned order was issued. In all these four OAs, interim relief was granted. At the interim stage, some of them were placed before me and some before the Hon'ble Chairman, but it appears quite clearly that by virtue of the interim orders, the status quo has been maintained in the sense that the Applicants have retained the places of postings they were transferred from.

4. It is, as must have become clear, an admitted position that the Applicants came to be transferred from their present posts. The Applicant Shri D.D. Shivhare in OA 453/2016 came to be transferred from Thane City to Naxalite Unit, Nagpur so also Shri D.S. Suryawanshi, the

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original Applicant of OA 454/2016 was also transferred likewise from Thane to Naxalite Unit, Nagpur. The Applicant Shri S.D. Gaikwad of OA 456/2016 came to be transferred from Navi Mumbai to Nagpur City while the original Applicant API, More by a separate order of the same date came to be transferred from Thane City to Nagpur City. As already mentioned above, it is common ground that all these transfers are mid-tenure transfers. The service condition of transfers in so far as Police Personnel are concerned, is now fully statute governed inter-alia by the provisions of Section 22 N of the Maharashtra Police Act, 1951 as amended on 6.4.2015. Their cases are required to be placed before the Police Establishment Board-2 (PEB-2) and then the transfers are effected by the competent authority. As I shall be presently pointing out in case of mid-tenure transfers, the competent authority is the Government of Maharashtra and when one talks about the highest competent authority, it is the Hon'ble Chief Minister. That being the state of affairs, the transfer orders issued even if as per the mandate of the PEB-2, by a police authority howsoever high, would be an order which would be susceptible to judicial interference and it may have to be quashed.

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5. The sum and substance of the case of the Respondents is that the performance of the Applicants left much to be desired and there is a subtle suggestion that their integrity was open to doubt. All these aspects in these matters were agitated at the time of consideration of interim relief also. It is pertinent to note that even in **Arun Pawar's OA** (supra), the stand of the Applicants was basically the same. I think, it will be appropriate to closely read that particular Judgment, so that it may not be necessary for me to add more of my own herein now. To the extent necessary, I shall consider the additional arguments advanced, but I must repeat that these OAs will have to be decided in line with the OA of **Arun Pawar** (supra). There also, the orders were based on the so called adverse report, as would become clear from the discussion of the Affidavit-in-reply filed by Mr. Anil P. Sawant. In this group of OAs also, the Respondents have relied upon the Judgment of the Hon'ble Supreme Court of India in **Appeal (Civil) 1010-1011/2004 (Union of India and others Vs. Shri Janardhan Debanath and Anr, dated 13.2.2004 (SC) Coram : His Lordship the Hon'ble Shri Justice Doraiswamy Raju & His Lordship the Hon'ble Shri Justice Arijit Pasayat)**. In Para 26 of the Judgment in **Arun Pawar** (supra), I discussed **Janardhan Debanath** (supra). I pointed out as to how the Department and the



services involved therein were different and as to how the present matter just as **Arun Pawar** (supra) were governed by the Maharashtra Police Act and in that context, the Judgment of the Hon'ble Supreme Court in **Prakash Singh and others Vs. Union of India and others (2006) 8 SCC Page 1 (Prakash Singh's case hereinafter)** and **Somesh Tiwari Vs. Union of India, 2009 (3) SLR 506 (SC)** with particular reference to Para 20 thereof would govern this particular matter.

6. Para 26 of **Arun Pawar** (supra) may now be reproduced for facility.

“26. The Respondents referred me to a judgment of the Hon'ble Supreme Court in **Janardhan Debanath** (supra) (See Para 4 above). In that particular matter, the Rules pertaining to the employees of Postal Services fell for consideration of the Hon'ble Supreme Court. There also the transfers were effected apparently on public interest and exigencies of administration. The issue of the use of a word, “undesirable” was also involved because Their Lordships were told that if that was the allegation, then the DE was must. Now, the facts in that particular matter were



entirely different. The issue of public interest, administrative exigency and all other fact facets herein relevant will have to be understood in the context of the judgment of the Hon'ble Supreme Court in **Prakash Singh's** case (supra) and the express provisions of the Rules herein and also the judgment of the Hon'ble Supreme Court in **Somesh Tiwari** and other judgments discussed above that arose out of either the provisions of the said Act or Transfer Act both applicable to the State of Maharashtra."

7. In Para 7 of **Arun Pawar** (supra), I discussed the history preceding the amendment of the Maharashtra Police Act. It will be advantageous again to fully reproduce Para 7 from **Arun Pawar** wherein Paras 5 and 6 of another group of OAs was discussed in which the history of the enactment was considered.

"7. In fact, this year, several transfers came to be made in the Police Establishment, more or less in the same set of facts. A number of Original Applications (OAs) are brought before this Tribunal for redressal. In some matters, interim reliefs have also been granted. Now, in

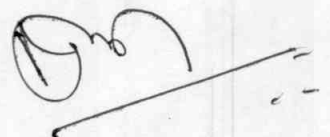


making such interim orders, in a fasciculus of 10 OAs being OAs 447 and 7 others involving 10 Applicants on 31.5.2016, I granted interim relief and that too of mandatory nature at interlocutory stage and effectively ordered reposting of those Applicants to the posts that they were transferred from. The legal issues that arose for consideration therein are more or less the same herein. The history preceding the amendments to the said Act was noted in Paras 5 & 6 of the said order by me. Let me reproduce those two Paragraphs (5 & 6).

“5. The issues herein involved including the one under consideration befall the ambit of the provisions of the Maharashtra Police Act, 1951 as amended from time to time including on 6th April, 2015. The rest of the provisions are also important, but the pivotal provision herefor is Section 22(N) of the said Act. It cannot be disputed that in a historical perspective, as a result of the judgment of the Hon'ble Supreme Court in **Prakash Singh and others Vs. Union of India and others (2006) 8 SCC Page 1**



Prakash Singh's case), the State Government constituted what has come to be known as Police Establishment Board (to be hereinafter called Board). Be it noted at this stage itself that transfer is one aspect of the service condition of the Government employees and in this case Police Personnel which has engaged of late the attention of the society, and therefore, of all the 3 wings of the State including the judiciary. It is not necessary at this stage to delve into the details thereof and it would suffice to mention that on account of various aberrations and other factors which were not quite honourable, the need was felt to streamline, regularize and make transparent the facet of transfer of the Government employee which in this case happen to be Police Personnel. Therefore, that aspect of the matter has now become statute regulated and that is relatable to the mandate of the Hon'ble Supreme Court in **Prakash Singh's** case. Therefore, it will have to be zealously guarded and made sure that the transfer aspect of the matter is not



made light of and is made strictly adhering to the statutory principles and also to translate into reality the legislative intent which in turn as mentioned above, traces its origin to the mandate in **Prakash Singh's** case.

6. Another aspect of the matter is that these disputes are brought before a forum which generally and by and large exercises jurisdiction of judicial review of administrative action with all the well known jurisdictional constraints. However, an approach which may lead to practical refusal to exercise jurisdiction at all even when there is a statutory mandate which traces its origin to the law laid down by the Hon'ble Supreme Court, then the judicial forum must guard thereagainst and must show awareness to the need of making sure that the statutory mandate was properly observed and if it is found even on a surface view that it was not, then there would be no other-go but "to act" in so far as the judicial forum is concerned."



8. It is, therefore, quite pertinent to note that the history preceding the statute will have to be borne in mind and apart from the fact that the service condition of transfer is now statute regulated, the statute was becaused by the law laid down by the Hon'ble Supreme Court in **Prakash Singh's** case. In Para 10 of **Arun Pawar** (supra), I considered a factual issue which is relevant even herein. It so happened that the copy of the minutes of the meeting of PEB-2 of 24.5.2016 showed *inter-alia* that the only non-Police Personnel namely Shri Satbir Singh, Principal Secretary, Home (Appeal & Security) was not present in that meeting nor was his signature there. In fact, the Affidavit of Shri Vhatkar in this particular matter accepts the position that Mr. Satbir Singh was not present. But according to him, he was not present because of his pre-decided engagement (Para 15, Page 32 of the Paper Book (PB) in OA 455/2016).

9. I have carefully read my Judgment in **Arun Pawar's** case, but it does appear that in that pair of OAs, the cause of absence of Mr. Satbir Singh was not explained at all and even now, in this group of OAs, Mr. Satbir Singh's Affidavit is not there. The point remains that Shri Satbir Singh was not present and he was the only personnel who was free from influence of the highest Police

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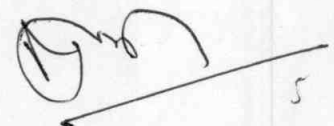
functionary. The Respondents have in this behalf relied upon the Judgment of the Hon'ble Vice-Chairman in **OA 556/2013 (Shri Suresh R. Nikam Vs. D.G. and IGP, dated 28.11.2013 and OA 842/2015 in Shri B.S. Shelke Vs. Special Inspector General of Police Force-1 and 2 others, dated 25.1.2016)**. I have carefully perused these two orders. I find that there the orders of transfers were being challenged on the plea of the Board having not been properly constituted because of the absence of one Member, and therefore, the issue of Coram was involved. Now, neither in **Arun Pawar** nor here, I go as far as to say that the orders of transfers would be bad at its inception for the absence of Shri Satbir Singh. What is most pertinent to note that in **Arun Pawar** (supra), there was an observation to the effect that it was possible that Mr. Satbir Singh had not even been informed of the meeting and the same holds good here as well. Further, in the two Judgments of this Tribunal above referred to (rendered by the Hon'ble Vice-Chairman), a number of Judgments of the Hon'ble Supreme Court and Hon'ble Bombay High Court were discussed. They were distinguished on the ground that they related to appointment and promotion and not transfer. In as much as I have made it very clear that I am not basing myself entirely on this single aspect of the matter. I do not think, any further discussion is necessary



in the background of the two Judgments of the Hon'ble Vice-Chairman. I leave it at that.

10. Returning back to **Arun Pawar** (supra). I then referred to the enactment of Section 22 E which provides for the Establishment of PEB-2. Section 22 F (3) was reproduced and it was pointed out that thereunder, the State Government was empowered to give binding directions to PEB-2 *inter-alia* with regard to the transfers of the Police Personnel.

11. In Para 14 of **Arun Pawar** (supra), the term, "competent authority" was taken up for consideration in the context of Section 22 N (1)(c) of the Maharashtra Police Act and it was fully reproduced. The amendment of 16.2.2015 whereby a proviso came to be deleted was adverted to and it was explained that the powers exercisable by the State Government could be exercised only by which and no authority other than the Government. In so far as the issue of transfers based on complaints, etc. are concerned, the provisions of Section 6(b)(ii) as to its proviso came to be examined and it was pointed out as to why such an authority would be none other than the Hon'ble Chief Minister. That all was in the context of mid-tenure transfers such as is the case herein.



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12. In Para 18, another Judgment of the Hon'ble Vice-Chairman was taken note of, wherein it was observed that though the term, "mid-tenure" was not defined, it was still very clear that such transfers could be made only by the State Government on the ground mentioned in Section 22 N (1) and not otherwise.

13. In considering the allegations of the Respondents about the lack of integrity, competence, etc. of the Applicants in the context of orders of transfers, it was found in **Arun Pawar** (supra) that thereby the Respondents wanted to use the power of transfer as a punitive measure and in that behalf, Para 20 of **Somesh Tiwari** (supra) came to be reproduced to rebut the case of the Respondents.

"20. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is



passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal.”


It will be better for the sake of facility, if I were to reproduce Paras 20 & 21 of Arun Pawar's case as well.

20. It is very clear from the above extract that in so far as service condition of transfer is concerned, once it is statute regulated, then on no ground other than those codified ones could the transfer be legally effected. In fact, it would amount to malice in law if the employer did that. In fact, the Hon'ble Supreme Court has been pleased to hold that such an order, were it to be made, would be wholly illegal.

21. No doubt, the provisions above referred to, lay down that the State Government could effect transfers, if the disciplinary proceedings were instituted or contemplated against the Police Personnel. Here, I must repeat times out of number that this power can never be exercised by PEB-2 and this initial jolt to the case of the



Respondents is not just a minor jolt but is fatal. But still further, there has to be tangible and concrete material to suggest that the said procedures were either instituted or contemplated and the judicial forum will certainly not act on a mere say so of the employer. Similarly, there is no question of conviction herein involved. There is a reference in Clause (c) of the proviso to the allegations of corruption or the Police Personnel having become otherwise incapacitated and the said Police Personnel being guilty of dereliction of duty. Similarly, by another proviso, it is laid down that in case of a serious complaint, irregularity, law and order problem, the highest competent authority could take the action of making transfer but here, PEB is by no means such a highest competent authority. Still further, by no stretch of imagination, can it be said that mere allegations of corruption, etc. would be sufficient even for the Government, and in this case, it is just PEB-2, to effect the transfers. In **OA 609/2015 (Rajendra M. Todkar Vs. The State of Maharashtra and 2 others, dated 10.3.2016)**, it was held by the Hon'ble Vice-



Chairman that a mere complaint unless enquired into was not sufficient to hold a person guilty even of dereliction of duty. It was also held that on a mere say so about administrative exigency an order of transfer cannot be upheld because were it to be done the provisions of the said Act would simply become otiose.”

14. I observed in Para 23 of **Arun Pawar** (supra) that mere high sounding serious looking allegations of complaints or incompetence would not be sufficient to sustain an order of transfer in the context of the facts such as they were in **Arun Pawar** and such as they are herein.

15. Even otherwise, other than power of transfers, the authorities are not denuded of their power to initiate other proceedings under the other set of Rules taking care of the other aspects of service condition like disciplinary aspect, etc. and they are free to do so, if they thought that a case was made out therefor. However, they cannot be allowed to use transfer as a ruse to achieve some object which the law does not envisage.

16. The upshot, therefore, is that as already indicated above, these OAs shall also have to follow the



same course of action as the OA in **Arun Pawar** (supra) and as far as these Applicants are concerned, the orders herein impugned will have to be quashed and set aside.

17. The orders herein impugned in so far as they relate to the Applicants in these four OAs stand quashed and set aside. The Respondents shall act in accordance herewith and if need be, issue formal orders of reposting the Applicants to the posts they had been transferred from by the impugned order till such time, as they become due for transfer as per law and rules. Compliance within two weeks from today. The interim orders get merged with this final order. The Original Applications are allowed in these terms with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
13.10.2016

Mumbai
Date : 13.10.2016
Dictation taken by :
S.K. Wamanse.