

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NOS.689 TO 693 OF 2020  
WITH  
ORIGINAL APPLICATION NO.05 OF 2021**

**DISTRICT : PUNE**

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**ORIGINAL APPLICATION NO.689 OF 2020**

Shri Ajay Mahadev Kharade. )  
Age : 45 Yrs., Working as Head Constable, )  
R/at – S.No.294/3, Nimbalkar Nagar, )  
Lohgaon, Pune. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through Addl. Chief Secretary, )  
Home Department, Mantralaya, )  
Mumbai – 400 032. )
2. The Commissioner of Police. )  
Sadhu Vaswani Chowk, Church Path )  
Agarkar Nagar, Pune – 411 001. )...**Respondents**

**WITH**

**ORIGINAL APPLICATION NO.690 OF 2020**

Shri Shrikrishn U. Khokle. )  
Age : 34 Yrs., Working as Police Constable,) )  
R/at – R.No.64/100, Bhavanipeth Police )  
Line, Nanapeth, Pune – 411 002. )...**Applicant**

**Versus**

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

**WITH**

**ORIGINAL APPLICATION NO.691 OF 2020**

Shri Uttam G. Kadam. )  
Age : 50 Yrs., Working as Police Constable,) )  
R/at – A2/13, Vishrantwadi Police Line, ) )  
Yerwada, Pune – 411 006. )...**Applicant**

**Versus**

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

**WITH**

**ORIGINAL APPLICATION NO.692 OF 2020**

Shri Ganesh S. Kaspate. )  
Age : 36 Yrs., Working as Police Naik )  
at Police Headquarter, Vishrantwadi Police )  
Line, Building No.A/2/8, Yerwada, ) )  
Pune – 411 006. )...**Applicant**

**Versus**

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

**WITH**

**ORIGINAL APPLICATION NO.693 OF 2020**

Shri Vishal P. Sable. )  
Age : 33 Yrs., Working as Police Naik, )  
R/at Shivajinagar Police Line, )

A-6, Near Modern College, )  
Pune – 411 005. )...**Applicant**

**Versus**

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

**WITH**

**ORIGINAL APPLICATION NO.05 OF 2021**

Shri Ajay D. Jadhav. )  
Age : 55 Yrs., Working as Assistant )  
Sub-Inspector, R/at 51/8, Parvati Darshan)  
Pune. )...**Applicant**

**Versus**

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

**Mrs. Punam Mahajan, Advocate for Applicants.**

**Mrs. K.S. Gaikwad, Presenting Officer for Respondents in  
O.A.Nos.689/2020, 690/2020 & O.A.05/2021.**

**Mrs. A.B. Kololgi, Presenting Officer for Respondents in O.A.Nos.691  
to 693/2020**

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

**DATE : 06.08.2021**

**JUDGMENT**

1. In all these Original Applications, the Applicants who are serving in the cadre of Police Constables/ASI have challenged their mid-tenure transfer dated 26.09.2020 invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to these applications are as under :-

The Applicants are serving in the cadre of Police Constables/ASI on the establishment of Respondent No.2 – Commissioner of Police, Pune. They are entitled to five years' tenure at one place of posting as provided under Section 22N(1)(b) of Maharashtra Police Act. However, by impugned transfer order, the Applicant Nos.1, 2, 3 and 6 were transferred mid-tenure and Respondent Nos.4 and 5 were transferred mid-term by impugned order dated 26.09.2020 passed by Commissioner of Police, Pune.

3. Following Chart would indicate the details of their posting order in the present post and also indicates the nature of transfer as mid-tenure and mid-term.

<b>Sr.No.</b>	<b>O.A.No.</b>	<b>Name and Designation</b>	<b>Date of present posting and place</b>	<b>Date of transfer and place</b>	<b>Tenure on the post from which the Applicant is transferred</b>
1.	689/2020	Shri Ajay Mahadev Kharade, Head Constable	16/07/2019 Airport Police Station, Pune	26/09/2020 Police Headquarter, Pune	01 year, 02 months, 18 days (As on 31.05.2020 completed only 10 months)
2.	690/2020	Shri Shrikrishan U. Khokale, Police Constable	27/07/2018 Bharti-Vidyapeeth Police Station, Pune	26/09/2020 Police Headquarter, Pune	02 years, 02 months (As on 31.05.2020 completed only 1 year, 10 months)
3.	691/2020	Shri Uttam G. Kadam, Police Constable	09/03/2019 Khadki Police Station, Pune	26/09/2020 Police Headquarter, Pune	01 year, 06 months, 19 days (As on 31.05.2020 completed only 1 year, 2 months)
4.	692/2020	Shri Ganesh S. Kaspate, Police Naik	12/06/2015 Faraskana Police	26/09/2020 Police Headquarter,	As on 31.05.2020

			Station, Pune	Pune	completed only 4 years, 10 months)
5.	693/2020	Shri Vishal P. Sable, Police Naik	30/05/2013 Chaturshringi Police Station, Pune	26/09/2020 Police Headquarter, Pune	As on 31.05.2020 completed only 4 years, 10 months
6.	05/2021	Shri Ajay D. Jadhav Asst. Sub-Inspector	27/08/2018 Crime Branch, Pune	26/09/2020 Police Headquarter, Pune	01 Year, 09 months

4. Smt. Mahajan, learned Advocate for the Applicants sought to assail the impugned transfer order *inter-alia* contending that transfer order pertaining to Applicant Nos.1, 2, 3 and 6 are mid-tenure and pertaining to Applicant Nos.4 and 5 as indicated in Chart are mid-term without there being proper compliance of Section 22N(2) of Maharashtra Police Act which *inter-alia* provides for mid-term transfer only in case of special administrative exigency or public interest. She further submits that alleged ground of default attributed to the Applicant for mid-tenure and mid-term transfer are not at all sustainable since there are no such deliberation in the minutes of PEB and the ground of default is only raised after thought. She, therefore, vehemently urged that the impugned transfer orders are in blatant violation of the provisions of Maharashtra Police Act and liable to be quashed.

5. Per contra, Smt. K.S. Gaikwad, learned Advocate sought to support the impugned transfer orders *inter-alia* contending that in view of default report, the PEB has recommended for the transfer of Applicants invoking Section 22N(2) of Maharashtra Police Act and it needs no interference.

6. True, the transfer is an incidence of Government service and no Government servant has vested right to continue at one place. However,

the Applicants being Police Personnel, their transfers are now governed by the provisions of Maharashtra Police Act which has been amended in pursuance of decision rendered by Hon'ble Supreme Court in **(2006) 8 SCC 1 [Prakash Singh and Ors. Vs. Union of India and Ors.]**. The normal tenure of Police Personnel in the cadre of constabulary is five years as provided under Section 22N(1)(b) of Maharashtra Police Act. The constabulary is defined in Section 2(4A-1) means Police Constable, Police Naik, Police Head Constable and Assistant Sub-Inspector. The Applicant Nos.1 to 5 are Police Constables, Police Naik and Applicant No.6 is ASI. As such, they are entitled to normal tenure of five years within the meaning of Section 22N(b) of Maharashtra Police Act.

7. As per Section 2(6-A) of Maharashtra Police Act, the 'General Transfer' means posting of Police Personnel in the Police Force from one post, office or department to another post, office or department in the month of April and May of every year after completion of normal tenure as mentioned in Sub-section 1 of Section 22N.

8. Whereas 'Mid-term transfer' as defined in Section 2(6-B) means transfer of a Police Personnel in the Police Force other than the general transfer.

9. As such, as per the scheme of Maharashtra Police Act, the Applicants are entitled to five years' tenure at one place of posting and in case mid-term transfer is necessitated, it has to be in consonance with Section 22N(2) of Maharashtra Police Act, which is as under :-

**"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.

10. Suffice to say, transfers are now not left to the whims and caprice of the executive, but they are strictly controlled and governed by the provisions of Maharashtra Police Act, so that Police Personnel should get

minimum normal tenure so as to discharge duties without fear and favour and to keep political influence at bay.

11. In pursuance of direction by Hon'ble Supreme Court in **Prakash Singh's** case, the PEBs are established at various levels to consider general as well as mid-tenure transfers of Police Personnel and Police Officers. In the present case, the PEB at Commissionerate level is competent authority for transfer of the Applicants.

12. Now turning to the facts of the present case, indisputably, Applicant Nos.1, 2, 3 and 6 have not completed their normal tenure of five years in the present post (place before they have transferred). They have completed tenure of one year to two years in the present post. In so far as Applicant Nos.4 and 5 are concerned, they were also not due for transfer i.e. in general transfer which were to be effected in the month of April and May of 2020. However, Applicant Nos.4 and 5 were also transferred by order dated 26.09.2020 which is mid-term transfer being not passed in the month of April and May of 2020. Suffice to say, transfers of all these Applicants are mid-term transfers in the light of provisions of Maharashtra Police Act.

13. Now, question comes whether the Respondents have make out a case of mid-term/mid-tenure transfer on the touchstone of Section 22N(2) of Maharashtra Police Act.

14. The default/misconduct allegedly attributed to the Applicants is required to be examined to find out whether it makes out a case of mid-term/mid tenure under Section 22N(2) of Maharashtra Police Act.

15. To begin with before dealing with the alleged default attributed to the Applicants, it needs to be noted that all these Applicants amongst other Police Personnel were transferred in pursuance of minutes of PEB held on 26.09.2020. The perusal of PEB minutes reveals that information about Police Personnel who have completed five years' tenure

were placed before PEB for general transfers of 2020. Accordingly, PEB considered the proposal placed before it and recorded minutes as under:-

“पुणे शहर आयुक्तालयाचे आस्थापनेवर कार्यरत पोलिस कर्मचारी एकूण ७५५४ असून विहित कालावधी पूर्ण झालेले बदलीपात्र कर्मचारी एकूण ९८६ आहेत. उपरोक्त शासन निर्णयानुसार बदलीपात्र कर्मचा-यांची १५ टक्के प्रमाणे एकूण ११३२ पोलिस कर्मचारी इतके होत आहेत.

कार्यालयीन आदेश क्रमांक आस्था ३(१)/सर्वसाधारण बदली-२०२०/आस्थापना मंडळ गठण/२०२०-७०९९ दिनांक १०/८/२०२० अन्वये उपसमिती गठीत करण्यात आली होती. गठीत करण्यात आलेल्या उपसमितीने महाराष्ट्र पोलिस (सुधारणा) अध्यादेश, २०१४ अधिनियमातील नियम २(ख)(६) मध्ये नमूद केल्याप्रमाणे दिनांक ३१/०५/२०२० रोजी एका पोलिस ठाणे/शाखा येथे ५ वर्षांचा कार्यकाळ पूर्ण करणारे पोलिस कर्मचारी (सहाय्यक पोलिस उपनिरीक्षक ते पोलिस शिपाई) यांची महाराष्ट्र पोलिस अधिनियम-१९५१ मधील कलम २२(एन) तसेच सर्वसाधारण बदल्या संदर्भातील शासन निर्णय, शासन परिपत्रके, अध्यादेश याचे अनुषंगाने पडताळणी करून सर्वसाधारण बदल्या-२०२० चा अहवाल सादर केला आहे.

उपरोक्त मुख्य आस्थापना मंडळ यांनी उपसमितीने सादर केलेला सर्वसाधारण बदल्या-२०२० बाबतचा अहवाल स्वीकारला आणि उपसमितीने सादर केलेल्या शिफारशीप्रमाणे सहाय्यक पोलिस उपनिरीक्षक ते पोलिस शिपाई कर्मचारी यांच्या सर्वसाधारण बदल्या-२०२० करण्याचे सर्वानुमते मान्य करण्यात आलेले आहे. आस्थापना मंडळाने केलेल्या स्वीकृत केलेल्या अहवालानुसार विहित कालावधी पूर्ण केलेल्या बदलीपात्र कर्मचारी सहाय्यक पोलिस उपनिरीक्षक ७२, पोलिस हवालदार ४२२, पोलिस नाईक २६९, पोलिस शिपाई १८३ याप्रमाणे एकूण ९४६ पोलिस कर्मचारी यांच्या सर्वसाधारण बदल्या-२०२० बदल्यांची यादी सोबत जोडलेली आहे.

तसेच प्रशासकीय कारणास्तव सहाय्यक पोलिस उपनिरीक्षक ०९, पोलिस हवालदार १६, पोलिस नाईक ३९, पोलिस शिपाई १६९ याप्रमाणे एकूण २३३ व वैयक्तिक अडचणीस्तव विनंती केलेले कर्मचारी सहाय्यक पोलिस उपनिरीक्षक ०१, पोलिस हवालदार ३८, पोलिस नाईक १५, पोलिस शिपाई ५६ याप्रमाणे एकूण ११० असे एकंदरीत एकूण १२८९ पोलिस कर्मचारी यांच्या सर्वसाधारण बदल्या-२०२० बदल्यांची यादी सोबत जोडलेली आहे.”

16. Here we are concerned with the last Paragraph of the minutes whereby total 1289 Police Personnel/Police Officers were shown transferred citing administrative reason. The Applicants' case allegedly fall in the category of transferred on administrative ground as recorded in the last Paragraph of the minutes of PEB.

17. Thus, what is striking and important to note that except stating that these 1289 Police Personnel were transferred on administrative ground, no details of the administrative ground or default is forthcoming in minutes of PEB. *Ex-facia*, those were neither adverted to nor deliberated by the members of PEB otherwise it would have find place in the minutes of PEB. Suffice to say, there is absolutely no reference of any such default report and necessity of transfer of the Applicants because of default report in the minutes of PEB. As such, there are reasons to say that no such default report was placed before PEB and it



was not the reason for mid-term/mid-tenure transfer of the Applicants. They were simply shown transferred under the name of administrative exigency. Whereas, Section 22N(2) mandates that there has to be special exigency or public interest for such mid-term transfer of Police Personnel and it needs to be spelt out from minutes of PEB.

18. At this juncture, it would be apposite to refer Circular dated 07.10.2016 issued by Special Inspector General of Police by way of instructions to PEB when Police Personnel are transferred mid-tenure or mid-term. It *inter-alia* provides that where transfer is necessitated on account of default report or misconduct, there has to be preliminary enquiry and *prima-facie* satisfaction of the concerned authority. It further provides that there should be satisfaction of PEB that transfer is in public interest and for administrative exigency and it should be specifically recorded in the minutes of PEB. However, there is no such compliance of Circular dated 07.10.2016 and Applicant are shown transferred under the caption of administrative exigency without any discussion or deliberation about the nature of alleged default report, its seriousness, etc. The issue is dealt with in very cavalier manner completely ignoring mandate of Section 22N(2) of Maharashtra Police Act.

19. Suffice to say, there has to be deliberation and discussion in PEB to satisfy that mid-tenure/mid-term transfers are necessitated for certain administrative exigencies which has to be spelt out in the minutes of PEB and mere mention/caption that transfers are on administrative ground is not at all compliance of the mandate of Section 22N(2) of Maharashtra Police Act. If transfers are allowed in such casual manner, it would defeat the purpose of law.

20. Apart, on factual examination, the perusal of alleged default report cannot be accepted as a ground for such mid-term/mid-tenure transfer of the Applicants. Let us see the alleged default attributed to the Applicants.

21. In O.A.No.689/2020, the Respondents have placed on record one more default report submitted by Shri Pankaj Deshmukh, Deputy Commissioner of Police, Zone-IV, Pune (Page No.40 of P.B.). In report which is addressed to Commissioner of Police, he stated that the complaint from one Sagar G. Suryawanshi has been received against the Applicant and for the said reason, he recommended for the transfer of the Applicant. The contents of report dated 01.06.2020 are as under :-

“उपरोक्त विषयास अनुसरून सादर करण्यात येते की विमानतळ पो स्टे येथे नेमणुकीस असलेले पोहवा ५३०० खराडे व पोना/२५७६९ गोणे यांचे विरुद्ध अर्जदार सागर गोपाळ सुर्यवंशी, उपसंपादक मनपा वृत्त, पुणे यांचा तक्रारी अर्ज प्राप्त झाला असून त्यामध्ये त्यांनी अ विमानतळ पोलिस ठाणे हद्दीमध्ये वरिष्ठ पोलीस निरीक्षक श्री. श्रीयुत गजानन पवार आणि पोलीस निरीक्षक गुन्हे यांचे मदत, प्रोत्साहन, मार्गदर्शन आणि संरक्षणाखाली बेकायदेशीररित्या मटका जुगार, तीन पत्ती, ऑनलाईन जुगार मोबाईलवरून स्वीकारणे, रमी काठी तितली पिंगपोंग चक्री, बुलबुल पत्ताडा सोरट अंदर बाहर तसेच विविध भागातील बुकिंकरून मटका बेटस स्वीकारणे आदी जुगाराचे प्रकार, सक्रिय जुगार माफिया स्वयंभू कार्यकर्ता/संघटनेचा कथित कार्यकर्ता/पदाधिकारी/राजकीय पुढारी म्हणून समाजात वावरणारा इसम नामे निलेश चव्हाण व त्यांचे सहकारी हे जुगाराचा प्रकार खेळविण्यात येत आहे. या अवैध धंद्यात विमानतळ पोलीस ठाणे मधील कर्तव्य बजावण्यास नियुक्त पोलीस शिपाई/२५७६ गोणे व पोलीस हवालदार खराडे हे विमानतळ पोलीस ठाणे हद्दीत अवैध धंदे चालकांकडून हप्ते वसुली करणारा पोलीस कर्मचारी यांच्या संगनमताने मोठ्या प्रमाणात सुरू आहे, तरी अवैध धंदे करून काळाबाजार करून राज्य शासनाची फसवणूक करणे आधी गैरकृत्यात त्यांचे सहकारी सामिल आहेत. या प्रकरणी जनहितार्थ कारवाई होणे, वगैरे मजकुराचा तक्रारी अर्ज केलेला आहे.”

22. Whereas, surprisingly, the same Deputy Commissioner of Police Shri Pankaj Deshmukh has conducted enquiry into the complaint made by Shri Sagar Suryawanshi and closed the said complaint, as seen from his report dated 29.06.2020 sent to Commissioner of Police (Page No.42 of P.B.). In report, it is stated that despite communication, the complaint Shri Sagar Suryawanshi did not remain present for inquiry. It is further stated that he enquired with the Applicant and got satisfied that there is no such involvement of the Applicant in the allegations attributed by the complainant. In report, he sum-up as under :-

“एकंदरीत अर्जदार यांनी केलेल्या अर्जाबाबत काही यांना काहीएक खारस्य राहिले नसलेचे दिसून येत आहे. तसेच अर्जातील नमूद तक्रारीचे अनुषंगाने गैरअर्जदार यांचेकडे सखोल चौकशी केली असता हद्दीमध्ये कोणत्याही प्रकारचे अवैध धंदे चालू नाहीत. तसेच चोरून लपवून अवैध धंदे चालकांची माहिती घेऊन त्यांचेवर प्रचलित कार्यक्रमाने गुन्हे दाखल करण्यात आलेले आहेत.

भविष्यात आमचे कार्यक्षेत्रात कोणत्याही प्रकारचा अवैध धंदा चालणार नाही याबाबत आम्ही स्वतः खात्री करून चोरून लपून अवैध धंदा चालणारे चालक मालक यांचेवर प्रचलित कायदानुसार कारवाई करून अवैध धंद्यांचे समूळ उच्चाटन होण्याकरिता विशेष प्रयत्न करीत आहोत.

अर्ज चौकशीची विहित मुदत संपली आहे व अर्जदार हे अर्ज चौकशीकामी हजर राहिलेले नाहीत. तरी दाखल तक्रारी अर्ज हा तुरास दप्तरी होणेस विनंती आहे.”

23. Thus, apparently, no substance was found in the complaint made by Shri Sagar Suryawanshi and despite this position, the said complaint has been used for transfer of the Applicant. In other words, the transfer is made on non-existent ground, which amounts to malice and punishment for non-existent default.

24. Conversely, the ACR produced by the Applicant (Page No.55 of P.B.) reveals that he was given grading as "Outstanding", "Very Good", "Good (B)" from 1995 to 2018. Furthermore, as seen from letter issued by none other than Shri Pankaj Deshmukh dated 14.09.2020, Applicant's name was recommended for medal stating that he has rendered meritorious service.

25. In this view of the matter, the alleged complaint made by Shri Sasgar Suryawanshi being already closed could not form the basis or foundation for transfer of the Applicant.

26. In O.A.No.690/2020, the Respondents have placed on record default report dated 18.07.2020 whereby Shri Shirish Deshpande, Deputy Commissioner of Police, Zone-II had submitted the list of 21 Police Personnel for transfer stating that they are arrogant. In so far as Applicant is concerned, all that it is stated that his behavior with public is arrogant and have no good relations with colleagues. Except this vague allegation of arrogant behavior, nothing is forthcoming on record in the form of notices or memos given to the Applicant for any such specific instance establishing his alleged arrogance. Conversely, in ACR (Page Nos.59 & 60 of P.B.) his grading is shown "Very Good" and relations with public is also recorded as Very Good and courteous.

27. In O.A.691/2020, the Respondents have placed on record default report dated 16.06.2020 (Page No.36 of P.B.) whereby Police Inspector, Police Station, Khadki had recommended for transfer of 12 Police Personnel including the Applicant stating that their behavior with public is arrogant. In this matter also, no specific instance establishing his

arrogance for misconduct is forthcoming. No notice or memo has been issued to him at any point of time for such alleged misconduct.

28. Now turning to O.A.No.692/2020, the default report dated 18.07.2020 is placed on record at Page No.33 of P.B. Here again, it was report submitted Deputy Commissioner of Police, Zone-I against 20 Police Personnel including the Applicant alleging arrogance and avoidance of duties. Here also, except this vague report, no specific instance is quoted. There is nothing to indicate that any point of time, notice or memo was issued to the Applicant.

29. In O.A.693/2020, the Respondents have placed on record default reports dated 05.06.2020 and 22.05.2020 alleging that Applicant is avoiding duties and his behavior is suspicious. Except this reports, no other material in support of it in the form of notice or memo is forthcoming. No specific instance is quoted. Conversely, his performance in ACR is graded as "A" and "B+".

30. Lastly, in O.A.No.05.2021, default report dated 27.07.2019 is placed on record at Page No.37 of P.B. wherein all that it is stated that Applicant's performance is not satisfactory and there is no improvement in his work. Whereas, as per ACR, he was given grading "A" and "B" in the period from 2017 to 2020. Indeed, non-performance to the satisfaction of authority cannot be a ground for transfer. If there was any such non-performance, a Government servant can be dealt with suitable disciplinary action and transfer would be punishment in law.

31. Thus, what transpires from record that in the first place, there was no such discussion or deliberation in PEB on the point of alleged misconduct attributed to the Applicants. Secondly, the alleged default report as discussed above are of generalized nature and those cannot form the basis for mid-term and mid-tenure transfer for the reasons discussed above.

32. At this juncture, it would be apposite to refer the decision of Hon'ble Supreme Court in **(2009) 2 SCC 592 (Somesh Tiwari Vs. Union of India)**. Para No.16 of the Judgment is as under :-

*“16. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two kinds – one malice in fact and the second malice in law. 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 in lieu of punishment, the same is liable to set aside being wholly illegal.”*

33. Furthermore, reference can be made to the decision of Hon'ble High Court in **Writ Petition No.7960/2011 (Harish Baijal Vs. State of Maharashtra)** wherein in Para No.10 held as follows :

*“10. It is well settled that transfer of a government servant is an incident of service and the courts should not interfere with such transfer orders, ordinarily. A government servant holding a transferable post has no vested right to continue at a particular posting or at one place or the other. However, in the State of Maharashtra, the transfer orders are governed by a special statute i.e. the Transfer Act and if the procedure, as set out in the said Act, is not followed while issuing the transfer order, such order would be unsustainable. Similarly, if an order of transfer suffers from malice or if it has been issued by way of victimization or by way of a penal action, the court would be justified in setting aside such order.”*

34. The principles enunciated in aforesaid decisions are squarely attracted to the present case and there is no escape from the conclusion that the impugned transfer order does not satisfy the mandate of Section 22N(2) of Maharashtra Police Act.

35. The learned P.O. sought to place reliance on the decision of Hon'ble Bombay High Court in **Writ Petition No.6809/2017 (Vazir Shaikh Vs. State of Maharashtra) decided on 15.11.2017**. In that case, the Applicant Shri Vazeer Shaikh was attached to Economic Offence Wing, Nagpur. During that period, the Respondents therein had

formed Special Investigation Team to conduct special enquiry into the cases of Land Grabbing and the Applicant was part of the said Special Investigation Team. However, by order dated 24.05.2017, he was directed to handover the investigation papers and further directed only to investigate one Crime No.312/2016. On this background, he was transferred by order dated 04.07.2017 from Economic Offence Wing to Traffic Branch, Nagpur. The Respondents therein opposed the O.A. stating that on 24.05.2017, the Joint Commissioner of Police, Nagpur directed the Applicant to handover all investigation papers, but he did not obey the orders and even did not report to incharge of Special Investigation Team. He was attending Special Investigation Team as per his whims and desire. At the same time, there was urgency of one Officer for Road Safety Programme in Traffic Branch in view of undergoing construction of Metro Rail. The said post of Traffic Branch was vacant. It is in that context, the Applicant was transferred to Traffic Branch in public interest on the ground of administrative exigency. As such, in the facts of the case, the challenge to the transfer order was dismissed and the Judgment was also confirmed by Hon'ble High Court in Writ Petition. The Hon'ble High Court observed that the regulation of traffic was necessary in public interest, and therefore, the transfer should not be interfered with. In my considered opinion, the Judgment in **Vazeer Shaikh's** case (discussed above) is hardly of any assistance to the learned P.O. in the present context.

36. The totality of aforesaid discussion leads me to sum-up that the impugned transfer orders are in blatant violation of mandate of Section 22N(2) of Maharashtra Police and liable to be quashed. Hence, the following order.

### **ORDER**

(A) All these Original Applications are allowed.

- (B) The impugned transfer orders dated 26.09.2020 qua Applicants are quashed and set aside.
- (C) The Respondents are directed to repost the Applicants on the post they have transferred from within two weeks from today.
- (D) No order as to costs.

Sd/-

**(A.P. KURHEKAR)**  
**Member-J**

Mumbai

Date : 06.08.2021

Dictation taken by :

S.K. Wamanse.

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