

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**ORIGINAL APPLICATION NO.747 OF 2019
WITH
ORIGINAL APPLICATION NO.748 OF 2019**

DISTRICT : PUNE

ORIGINAL APPLICATION NO.747 OF 2019

1. Shri Sampat G. Nikam)
2. Shri Pravin K. Dale)
3. Shri Tushar Ashok Shete)
4. Shri Nitin R. Bahirat)
5. Shri Pramod S. Hiralkar)
6. Shri Sunil D. Choudhari)
7. Shri Mohammad Gaus Rafiq Nadaf)
All are aged Adult, working in Crime)
Branch under the Resp.No.1 in the office)
of Police Inspector, Crime Branch, Pimpri-)
Chinchwad, Thergaon, Pune 33, All)
Petitioners are R/o. Pune.)...**Applicants**

Versus

1. Commissioner of Police, Pimpri-)
Chinchwad Police Commissionerate,)
O/at Chinchwad, Pune 33.)
2. The State of Maharashtra, through)
Additional Chief Secretary, Home Dept.)
O/at. Mantralaya, Mumbai 400 032.)...**Respondents**

WITH

ORIGINAL APPLICATION NO.748 OF 2019

1. Shri Ganesh G. Malusare)
2. Shri Savan Topu Rathod)

Both are aged Adult, working in)
 Crime Branch Under the Resp.No.1 in the)
 office of Police Inspector, Crime Branch,)
 (Unit No.2), Pimpri-Chinchwad, Thergaon,)
 Pune 33, All Petitioners are R/o. Pune.)...**Applicants**

Versus

1. Commissioner of Police, Pimpri-)
 Chinchwad Police Commissionerate,)
 O/at Chinchwad, Pune 33.)
2. The State of Maharashtra, through)
 Additional Chief Secretary, Home Dept.)
 O/at. Mantralaya, Mumbai 400 032.)...**Respondents**

Shri A. V. Bandiwadekar, Advocate for Applicants.

Ms. S.P. Manchekar, Chief Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 02.12.2019

JUDGMENT

1. The Applicants have challenged their impugned transfer orders dated 10.07.2019 and 24.06.2019 on the ground that those are in contravention of the provisions of Maharashtra Police Act. Both the O.As arising from common issues are decided by common Judgment.

2. Shortly stated facts are as follows:-

O.A.No.747/2019 is filed by five Police personnel whereas O.A.No.748/2019 is filed by two police personnel. All the Applicants were working in Crime Branch Unit. The Applicants in O.A.No.747/2019 were working in Crime Branch Unit No.1, Pimpri-Chinchwad. Whereas, the Applicants in O.a.No.748/2019 were working with Crime Branch Unit-2, Pimpri-Chinchwad. The Applicants have hardly completed 10 months in Crime Branch Unit

but they were abruptly transferred to Head Quarter by order dated 10.07.2019 and 24.06.2019 without allowing them to complete their normal tenure. The Applicants have therefore challenged the impugned transfer orders on the ground that they are transferred mid-term and mid-tenure without there being any administrative exigency or any other reason for their mid-term transfer.

3. Shri A. V. Bandiwadekar, learned Counsel for the Applicants sought to assail the impugned transfer orders on following ground:-

- (a) Transfers are mid-term and mid-tenure.
- (b) No cases made out for mid-term and mid-tenure transfer in the teeth of Section 22N(2) of Maharashtra Police Act.
- (c) Constitution of Police Establishment Board (PEB) at Commissionerate level which recommended the transfer of the Applicants is not in consonance with Section 22N of Maharashtra Police Act.

4. Per contra, Ms. S.P. Manchekar, learned C.P.O. for the Respondents sought to justify the impugned transfer orders contending that Pimpri-Chinchwad Police Commissionerate being newly set up in August, 2018, the administration felt it necessary to reshuffle the posting of the police personnel in entire Commissionerate area, and therefore, the matter was placed before PEB who recommended for transfers of (305+74=379) police personnel including the Applicants. The Applicants who were working in Crime Branch Unit No.1 and 2 were accordingly transferred to Police Headquarter, Pimpri-Chinchwad. With this submission, learned C.P.O. sought to justify the impugned transfer orders.

5. Undisputedly, the Applicants have hardly completed 10 months at their present posting in Crime Branch Unit Nos.1 and 2 and they were not due for transfer.

6. Once the Applicants were found admittedly not due for transfer, the question comes whether the impugned transfer orders are sustainable in law.

7. At this juncture, it would be apposite to refer Section 22N(2) of Maharashtra Police Act which provides for mid-term and mid-tenure transfer in exceptional cases, in public interest and on account of administrative exigencies, which is as follows :-

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

8. As such, in the present case, the Competent Authority is Police Establishment Board constituted at Commissionerate level as contemplated u/s 22-I of Maharashtra Police Act, which is as follows:-

“22-I. Police Establishment Board at Commissionerate Level.

- (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 at Commissionerate Level.
- (2) The Police Establishment Board at Commissionerate Level shall consist of the following members, namely:-
 - (a) Commissioner of PoliceChairperson;
 - (b) Two senior-most officers in the Rank of Joint Commissioner or Additional Commissioner or Deputy Commissioner of Police.Member;
 - (c) Deputy Commissioner of Police (Head Quarter)Member Secretary

Provided that, if none of the aforesaid members is from Backward Class, then the State Government shall appoint an additional member of the rank of the Deputy Commissioner of Police belonging to such Class.”

9. Now turning to the present facts of the case, the perusal of Minutes of PEB dated 24.06.2019 and 10.07.2019 reveals that the said PEB was consist of three members namely Police Commissioner, Pimpri-Chinchwad, Additional Police Commissioner, Pimpri-Chinchwad and Deputy Commissioner of Police, Pimpri-Chinchwad. As such it was consist of three members only including Chairperson. Whereas, as per Section 22-I(2), the PEB shall consist of Chairperson, two senior most officers in the rank of Additional Commissioner and Member Secretary from the rank of Deputy Commissioner of Police, Headquarter. Thus, in law, it should consist of total four Members. Whereas in the present case, the PEB which recommended the Applicants transfer are consist of three members. Needless to mention that where the law provides for constitution of PEB in particular manner then it has to be done in the manner prescribed and there cannot be any latitude. This being the position, there is no escape from the conclusion that constitution of PEB is not in terms of Section 22-I of Maharashtra Police Act. This is one of the major legal defects in the constitution of PEB.

10. Furthermore, the law requires that one of the members of PEB must be from Backward Class. As per proviso of Section 22-I, if none of the Member from PEB from Backward Class then the State Government is required to appoint additional member of the rank of the Deputy Commissioner of Police belonging to Backward Class. However, in the present case, there is no compliance of Section 22-I to establish that one of the members of PEB belongs to Backward Class.

11. Apart there is no compliance of Section 22-I of Maharashtra Police Act which inter-alia mandates that PEB shall be notified in the Official Gazette. In the present case, no such Notification of constitution of PEB in the Official Gazette is forthcoming.

12. Suffice to say that there are vital legal defects in the constitution of PEB which purportedly recommended the transfer of the Applicants. Needless to mention that recommendation and transfer made by such PEB which is not in accordance to law are not sustainable in law and on this ground itself, impugned transfer orders are required to be quashed.

13. Even assuming for a moment that absence of member of Backward community in PEB and absence of Notification in Official Gazette does not render the decision of PEB, illegal, in that event also, in view of non-speaking and vague minutes of PEB, the impugned transfer orders are unsustainable in law.

14. As stated above, the PEB in its Minutes dated 24.06.2019 transferred 305 police personnel and again in Minutes dated 10.07.2019 transferred 74 police personnel. As such, in all 379 police personnel are transferred. By recommendation dated 24.06.2019, four Applicants were transferred and by recommendation dated 10.07.2019, five Applicants were transferred. Their names are in the list of 305 and 74 police personnel. All that PEB recorded in the Minutes as follows :-

“१. पोलीस आयुक्तालय पिंपरी चिंचवड गुन्हे शाखा-युनिट-२ यांचेकडिल जा.क्र.१/२०१९ दिनांक /०६/२०१९ रोजी वरिष्ठ पोलीस निरीक्षक, यांचेकडून काही नमुद कर्मचारी यांचे अनुषंगाने गोपनीय अहवाल पाठविण्यात आलेले सदर अहवालावर आस्थापना मंडळाची सांगोपांग चर्चा होऊन व अहवालाचे अवलोकन करून अहवालाच्या अनुषंगाने सर्वानुमते खालीलप्रमाणे निर्णय घेण्यात आला आहे.

आस्थापना मंडळाचे असे मत पडले आहे की, नव्याने सुरुवात करण्यात आलेल्या चौक्यांना मनुष्यबळ पुरवणेबाबत चर्चा करण्यात आली. पोलीस स्टेशन मध्ये व मुख्यालयास कामाची व्याप्ती पाहून मनुष्यबळ पुरविणेबाबत चर्चा करण्यात आली. पोलीस कर्मचारी यांच्या विनंती वरून प्रशासकीय कारणास्तव बदल करणे आवश्यक आहे. काही पोलीस कर्मचारी यांचे गुन्हे प्रकटीकरण व प्रतिबंधाचे अनुषंगाने कामगिरी अत्यंत असमाधानकारक आहे. कर्मचारी यांचे कामगिरी व कर्तव्यामध्ये सुधारणा करणे बाबत वारंवार सूचना दिल्या व प्रत्येक आठवडयामध्ये आढावा घेतला असता, त्यांचेमध्ये काही एक बदल झालेला नाही असे कर्मचारी, तसेच पोलीस आयुक्तालय पिंपरी चिंचवड नव्याने झाले असल्याने जेथे कर्मचारी कमी जास्त आहेत त्याप्रमाणे प्रशासकीय कारणास्तव त्यांचा आढावा घेवून बदल्याकरण्यात येत आहे.”

15. In minutes, reproduced above, the PEB recommended the transfer of some of the employees on administrative ground and in

respect of some of the employees; the transfers were affected because of alleged non performance in duties. Except these two reasons, vaguely mentioned in minutes, no other details viz-a-viz present Applicants are forthcoming. When such large number of police personnel are transferred, it is accepted to make it GroupWise to specify under which caption i.e. administrative exigencies or inefficiency, they fall. The PEB was required to examine the case of each and every person under transfer and to satisfy itself that that really there exists special case or administrative ground for such transfer. From Minutes of PEB, it cannot be gathered as to which employee has been transferred on which particular ground. Suffice to say, the Minutes recorded by PEB are too vague and does not satisfy the requirement of Section 22N(2) of Maharashtra Police Act.

16. In reply, the Respondents sought to contend that there were complaints against performance of the Applicants, and therefore, they were required to be shifted. However, except it, no further detail about their alleged inefficiency is forthcoming. Indeed, in terms of Circular dated 07.10.2016 issued by the Commissioner, where transfer is necessitated on account of complaint, it is necessary to collect relevant material in the nature of memo, explanation etc. and to submit detailed default report before the Competent Authority. However, in the present case, no such detail of alleged complaint is forthcoming much less discussed in PEB.

17. In this behalf, learned Counsel for the Applicants also referred to Circular dated 08.11.2017 issued by Special Inspector General of Police, Mumbai on the basis of order passed by this Tribunal explaining the procedure to be followed while effecting transfer of the police personnel on complaint. Para Nos.5, 6 and 7 of Circular is material which is as follow:-

“५. थोडक्यात, वरील मा. महाराष्ट्र प्रशासकीय न्यायाधिकरण, नागपूर खंडपीठ यांनी नोंदविलेले Ratio / निरीक्षणे राज्यातील सर्व घटक पोलीस प्रमुखांच्या निदर्शनास आणण्यात येत आहे की, कोणत्याही पोलीस कर्मचारी ते पोलीस अधिकारी पर्यंतच्या पोलीस अधिका-यांची जर महाराष्ट्र पोलीस अधिनियम, १९७१ मधील कलम २२न(२) मधील तरतुदीनुसार म्हणजे (1) Exceptional cases (2) Public Interest and (3) On account of Administrative exigency या तीघही निकषांच्या आधारावर ज्याप्रमरणामध्ये सामान्य पदावधी (Normal Tenure) पुर्ण होण्याच्या आधी जर संबंधित पोलीस आस्थापना मंडळाला बदली करावयाची असेल तर, तशा सुयोग्य प्रकरणात ज्या कर्मचारी/अधिकारी (पो.नि.पर्यंत) यांची त्यांच्या प्रतिकूल कामगिरीवरून किंवा त्यांच्या प्रतिकूल वर्तणुकीच्या आधारावर बदली करावयाची असल्यास त्यांच्या वर्तणुकीच्याबाबतीत संबंधित घटक पोलीस प्रमुखांनी निपक्षःपातीपणे प्रथमतः प्राथमिक चौकशी करणे आवश्यक आहे.

६. अशा प्राथमिक चौकशीमध्ये, ज्या पोलीस कर्मचारी/अधिका-यांचा (पो.नि.पर्यंत) सामान्य पदावधी पुर्ण होण्याच्याआधी बदली करावयाची असेल, तर त्यांचा सुध्दा अशा प्राथमिक चौकशीमध्ये जबाब नोंदवून घेणे आवश्यक आहे.

७. अशाप्रकारे सर्व जाब-जबाबाची नोंदणी केल्यानंतर, जर प्राथमिक चौकशीमध्ये ज्या अशा संबंधित पोलीस कर्मचारी/अधिका-यांचा (पो.नि.पर्यंत) सामान्य पदावधी पुर्ण होण्याआधी बदली करावयाची असेल, त्यांच्याविरुद्ध प्राथमिक चौकशीमध्ये सकृतदर्शनी त्यांनी त्यांची वर्तणूक प्रतिकूल आढळल्याची बाब पुढे आल्यास, अशा प्राथमिक चौकशीचा अहवाल त्याच्या सर्व कागदपत्रांसह संबंधित “पोलीस आस्थापना मंडळासमक्ष” ठेवणे आवश्यक आहे.”

However, in the present case, there is absolutely no material to show compliance of this circular.

18. Shri A.V. Bandiwadekar, learned Counsel for the Applicants rightly referred to the decision of Hon'ble High Court in W.P. No.8437/2017 where in similar situation the Hon'ble High Court maintained the order passed by the Tribunal quashing transfer orders. It was also the case of transfer of 70 police personnel without recording any specific reason so as to make out a special case for transfer under section 22N(2) of Maharashtra Police Act. Para No.8 of the judgment is important which is as follows:-

“8. In the present case, both the Respondents are Officers of the rank of Police Inspector and therefore as per Explanation to sub-section(2) of Section 22N of the said Act, the said Board is the Competent Authority. Therefore, to that extent, the learned AGP was right in offering criticism in relation to finding of the Tribunal that the power under sub-section (2) ought to have been examined by the State Government and not by the Competent Authority. However, there is a specific finding recorded by the Tribunal about the decision making process adopted by the said Board. To avoid any controversy, we called upon the learned AGP to produce copies of the relevant

Minutes of Meeting of the said Board. Accordingly, the learned AGP has produced for perusal of the Court Minutes of the Meeting of the said Board held on 24th May, 2016. The Minutes bear signatures of six out of seven members of the said Board. The Title of the Minutes is "Transfers on the basis of adverse reports". The Minutes contain names of large number of Officers (about 70), their present posting and their proposed postings. The Minutes do not record that the cases of the Officers named therein are exceptional cases or that the cases of the said Officers fall in the category covered by sub-section (2) of Section 22N in the sense that their cases are exceptional and therefore in public interest and on account of administrative exigencies, the Competent Authority has recommended transfers. In fact, in the Minutes, except the names of the officers, their place of original postings and place of proposed postings, nothing has been mentioned. We are conscious of the fact that it was not necessary for the Board to record elaborate reasons about each and every candidate. However, the Minutes do not show application of mind. The Minutes do not record satisfaction of the members of the Board that the cases of 70 Officers mentioned in the Minutes are exceptional cases inasmuch mid-term transfer were warranted in public interest and on account of administrative exigencies. There is nothing placed on record to show that any such satisfaction about the existence of the facts specified in sub-section (2) of Section 22N has been recorded by the said Board. Recording of such satisfaction is a condition precedent for passing a valid order of transfer under sub-section (2) of Section 22N of the said Act. Sub-section (2) is an exception to Sub-Section (1) which permits transfer only on the completion of the prescribed tenure."

19. As such, the ratio of the Judgment of Hon'ble High Court referred to above is squarely applicable to the present facts and there is no compliance of Section 22N(2) of Maharashtra Police Act in letter and spirit. In one stroke, 379 Police personnel were transferred without discussing as to whose transfer is necessitated on account of administrative exigency as an exceptional case. In absence of any such data or reasons, the transfers are not sustainable in law, it being made in generalized manner. Suffice to say, on this count also, the impugned transfer orders are unsustainable in law.

20. For the aforesaid reasons, I have no hesitation to sum-up that the impugned transfer orders are not sustainable in law and deserve to be quashed. Hence, the following order.

ORDER

- (A) Both the Original Applications are allowed.
- (B) Impugned transfer orders dated 10.07.2019 and 24.06.2019 are quashed and set aside.
- (C) The Applicants be reposted on the post, they were transferred from within two weeks from today.
- (D) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J