

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NOS.750 & 751 OF 2017**

**DISTRICT : NASHIK**

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**ORIGINAL APPLICATION NO.750 OF 2017**

Shri Rajesh O. Sable. )  
Age : 46 Yrs., Working as Police Head Constable )  
attached to Adgaon Police Station, Now )  
working in Maharashtra Police Academy, )  
Nashik Police Commissionerate and residing at )  
Row Bunglow, D/7, Hari Vihar, Nashik Road, )  
Nashik. ) **...Applicant**

**Versus**

1. The Commissioner of Police, )  
Nashik. )
2. The State of Maharashtra, )  
Through Additional Chief Secretary, )  
Home Department, Mantralaya, )  
Mumbai 400 032. )
3. The Director General & Inspector )  
General of Police, M.S, Mumbai having )  
Office at Old Council Hall, Shahid )  
Bhagatsingh Marg, Mumbai – 400 039. )
4. The Director. )  
Maharashtra Police Academy, having )  
Office at Trymbak Road, Nashik. ) **...Respondents**

**WITH**  
**ORIGINAL APPLICATION NO.751 OF 2017**

Shri Ashok Hari Salve. )  
 Age : 53 Yrs., Working as Assistant Sub )  
 Inspector attached to Upnagar Police Station in )  
 Nashik Police Commissionerate, now in )  
 Maharashtra Police Academy, Nashik and )  
 Residing at banker Mala, Tagore Nagar, )  
 Desh Smruti, Nashik – 6. )...**Applicant**

**Versus**

1. The Commissioner of Police, )  
 Nashik & 3 Ors. )...**Respondents**

**Mr. A.V. Bandiwadekar, Advocate for Applicants.**

**Ms. S.T. Suryawanshi, Presenting Officer for Respondents.**

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

**DATE : 10.12.2018**

**JUDGMENT**

1. In both the Original Applications, the challenge is to the common order dated 30.05.2017 passed by Respondent No.1 pertaining to posting / transfer of the Applicants on the establishment of Respondent No.4 invoking jurisdiction of this Tribunal under Section 21 of Administrative Tribunals Act, 1985. As both the

O.As are arising from common facts, they have been disposed of by this common Judgment from the point of convenience.

2. The Applicant in O.A.750/2017 viz. Mr. R.O. Sable was working as Police Head Constable at Adgaon Police Station Commissionerate, District Nashik. Whereas, the Applicant in O.A.751/2017 was working as Assistant Sub Inspector at Upnagar Police Station, Commissionerate, District Nashik. They have not completed five years tenure at these postings as contemplated in Section 22N(1) of Maharashtra Police Act, 1951. The Respondent No.2 – State Government vide G.R. dated 20.11.2014 had created 100 posts of various cadres on the establishment of Respondent No.4 i.e. Maharashtra Police Academy, Nashik which is under the control of Respondent No.3 – Director General of Police, State of Maharashtra. The Applicants contend that Respondent No.1 called for willingness of the Police Personnel for their deputation / posting at Maharashtra Police Academy by Wireless message dated 17.03.2016. The Applicants have not given willingness for their deputation / posting on the establishment of Respondent No.4. According to them, the transfers / postings on the establishment of Respondent No.4 was to be made only from the willing Police Personnel and not otherwise.

3. Though the Applicants have not given their willingness, by impugned order dated 30.05.2017 passed by Respondent No.1, they were shown posted on deputation on the establishment of Respondent No.4. Both the Applicants joined accordingly under protest without prejudice to their rights. Therefore, the Applicants have challenged the impugned orders *inter-alia* contending that they have not completed their normal tenure of five years, and therefore, the transfer being mid-tenure is in violation of the provisions of Maharashtra Police Act, 1951 as it is not on the recommendation of Police Establishment Board (PEB). They further contend that their transfers does not come within the proviso of Section 22N(1), as no case is made out as an exceptional case or of public interest to

transfer them mid-tenure. Furthermore, the Respondent No.1 has no jurisdiction to transfer them on the establishment of Respondent No.4, it being independent entity and such posting / transfer amounts to transfer out of Head Quarter which is not permissible in law. The Applicants assert that, in such situation, the Respondent Nos.2 and 3 are only empowered to transfer them from Commissionerate to establishment of Respondent No.4. On these grounds, the Applicants contend that the impugned transfer orders are *malafide*, arbitrary and not sustainable in law and facts.

4. The Respondents resisted the application by filing Affidavit-in-reply *inter-alia* denying that the impugned transfer orders are *malafide* or illegal. Admittedly, the Applicants have not completed their 5 years normal tenure at their respective postings at the time of impugned transfer orders. However, the Respondents sought to justify the impugned transfer orders on the ground that it was necessitated in view of administrative exigencies, and therefore, decision was taken by PEB to transfer them from their respective Police Stations to Maharashtra Police Academy, Nashik.

5. The Respondents contend that the Government has created 100 posts of various cadres on the establishment of Maharashtra Police Academy, Nashik vide G.R. dated 20.11.2014. Initially, willingness from Police Personnel were called and some of them were posted and transferred at Police Academy, Nashik. However, all posts could not be filled in and only 49 posts could be filled in and 51 posts remained vacant. Therefore, the letter dated 29<sup>th</sup> May, 2017 was received from Maharashtra Police Academy, Nashik to fill-in remaining 51 posts on deputation. Accordingly, the Respondent No.1 convened a meeting of PEB on 30.05.2017 to consider the request of Maharashtra Police Academy. In the said meeting, it was decided to fill-in remaining vacant posts of Police Academy and 36 Police Personnel were ordered to be transferred. Accordingly, by impugned order, the Applicants were transferred at Police Academy. The Respondents thus

contend that it is in consonance with the provisions of Section 22N(1) and 22N(2) of Maharashtra Police Act, 1951. In the meeting of PEB, it was observed that there was threat to the security at Maharashtra Police Academy in view of activities of Terrorist Organization, and therefore, posting of some Police Personnel as per the requirement of Police Academy was essential as an administrative exigency as well as in public interest. As regard willingness, the Respondents contend that, only because the Applicants have not given their consent, that cannot be the ground to challenge the transfer as the transfer is an incidence of service. By impugned transfers, the Applicants who were working at Police Stations within Nashik Commissionerate were transferred and post at Maharashtra Police Academy at Nashik itself, and therefore, there is no question of change of District of the Applicants. There is no *malafide* or arbitrariness or abuse of power in the process. On these pleadings, the Respondents prayed to dismiss the application.

6. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicants and Ms. S.T. Suryawanshi, learned Presenting Officer for the Respondents.

7. Shri A.V. Bandiwadekar, learned Advocate for the Applicants vehemently urged that, in absence of willingness from the Applicants, they cannot be transferred out of Commissionerate. Secondly, the Commissioner of Police has no jurisdiction to transfer the Applicants on the establishment of Police Academy. According to him, for such mid-term or mid-tenure transfer of Police Constables from Commissionerate to Police Academy, only Government or Director General of Police are authorized to make such transfers. He sought to rely on the Judgment rendered by this Tribunal in ***O.A.No.861/2018 dated 28.11.2018 (Rajendrakumar V. Trivedi Vs. Government of Maharashtra)***.

8. Per contra, the learned Presenting Officer countered that the transfer being instance of service of Government servant, the question of willingness is

immaterial and there is no such stipulation in G.R. dated 20.11.2014. She further canvassed that the Applicants were transferred out of Commissionerate of Police Academy at Nashik itself. She has further pointed out that PEB in its meeting dated 30.05.2017 discussed the issue and it was decided to transfer and post in all 353 Police Personnel within the District and out of it, 35 Police Personnel were posted at Police Academy. It was necessary in view of administrative exigencies as well as from the point of threat perception to Academy. In pursuance of decision of PEB, the Respondent No.1 – Commissioner of Police transferred the Applicants along with 33 other Police Personnel to Police Academy. It is in consonance of Section 22N(2) of Maharashtra Police Act.

9. In view of submissions advanced at the Bar, the grounds relied for challenging impugned transfer orders can be summarized as follows :

- (A) The Applicants have not completed normal tenure of 5 years as contemplated in Section 22N(1) of Maharashtra Police Act, 1951, and therefore, transfer is mid-tenure.
- (B) The Applicants have not given consent for the transfer out of Commissionerate, and therefore, the impugned transfers on the establishment of Police Academy, Nashik are unsustainable.
- (C) The Respondent No.1 – Commissioner of Police is not Competent Authority to transfer the Applicants on the establishment of Police Academy, as it falls within the jurisdiction of Respondent Nos.2 and 3 only.
- (D) No case is made out that the transfers were necessary in public interest and on account of administrative exigencies as contemplated in Section 22N(2) of Maharashtra Police Act.

(E) The impugned transfers were made without recommendation of PEB.

10. There is no denying that the Government of Maharashtra by G.R. dated 24.11.2014 created 100 posts on the establishment of Police Academy, Nashik. As per this G.R., posts were to be filled in as per service conditions. It is important to note that, there is no such stipulation in G.R. dated 30.11.2014 (which is at Page 24 of the P.B.) that the willingness of the Police Personnel concerned will be condition precedent for posting at Police Academy. By impugned order dated 30.05.2017 (Page 22 of P.B.), 35 Police Personnel were shown transferred on deputation at Police Academy. There is no dispute that the Applicants have not completed their 5 years normal tenure at the Police Station, Adgaon and Upnagar respectively.

11. Now, the material question is whether the transfers by impugned order dated 30.05.2017 are sustainable in law and facts. The Respondents does not dispute that, it is not mere posting but considered it as transfer.

12. The amendments made to Maharashtra Police Act in 2015 provides for the normal tenure of Police Personnel and competent authorities empowered to transfer Police Personnel. As per Section 22N(1)(b), the normal tenure of Police Constabulary shall be 5 years at one place of posting. Whereas, as per Section 2(4)(a)-1, 'Constabulary' means Police Constable, Police Naik, Police Head Constable and Assistant Sub Inspector. As such, the Applicants fall in the category of Constabulary and normal tenure shall be of 5 years at one place of posting. The competent authority for general transfer of Officers upto Police Inspector is PEB at Commissionerate level. Here, it would be material to reproduce Proviso to Section 22N, which is as follows :

“Provided that, the State Government may transfer any Police Personnel prior to the completion of his normal tenure, if,-

- (a) disciplinary proceedings are instituted or contemplated against the Police Personnel; or
- (b) the Police Personnel is convicted by a court of law; or
- (c) there are allegations of corruption against the Police Personnel; or
- (d) the Police Personnel is otherwise incapacitated from discharging his responsibility; or
- (e) the Police Personnel is guilty of dereliction of duty.

(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 :”

13. In the present case, the Respondents placed reliance on Section 22N(2) as reproduced above contending that the impugned transfers were necessary in public interest and on account of administrative exigencies being exceptional case, in such situation, the Competent Authority is authorized to make mid-term transfer of any Police Personnel of the Police Force. In the present case, the PEB at Commissionerate level is the competent authority for such mid-term transfer.

14. The learned P.O. has produced the copy of Notification dated 5<sup>th</sup> May, 2014 which shows that the Government was pleased to constitute PEB at each Commissionerate level under the Chairperson of Commissioner of Police. It consists of Chairman, senior-most Officer in the rank of Joint Commissioner, Additional Commissioner or Deputy Commissioner of Police, Head Quarter as Member Secretary. As such, there is no denying that the PEB at Commissionerate level, Nashik under the Chairperson of Commissioner of Police was established and notified.



15. The perusal of minutes of PEB dated 30.05.2017 reveals that, in view of dire necessity at Police Academy, the PEB unanimously decided to transfer 353 Police Personnel and out of it, 35 Police Personnel were transferred at Police Academy. The learned P.O. has also produced the Xerox copies of minutes of meeting in which the names of Applicants are figured. AS such, it is quite clear that PEB unanimously decided to transfer 35 Police Personnel to Police Academy.

16. Though the Respondents sought to assail the impugned transfer orders on the ground that it is arbitrary and abuse of power, I found no substance therein. The PEB in its minutes which are at Page No.73 has specifically mentioned that from the point of threat perception as well as administrative exigency, it was incumbent to fill in remaining vacant posts at Police Academy and on consideration of service record of the Police Personnel, law and order situation growing rate of crime, increasing workload, it was decided to transfer 36 Police Personnel at Police Academy. As such, the reasons for the impugned transfers are clearly spelt out. In fact, it is self-speaking minutes which make out a case of immediate transfers of Police Personnel at Police Academy. This being the position, it falls within the scope and ambit of Section 22N(2) of Maharashtra Police Act. It is clearly demonstrated from the minutes that it was in the public interest and on account of administrative exigencies. No malice or arbitrariness or abuse of power can possibly be attributed to PEB in making these transfers. Therefore, the submission advanced by the learned Advocate for the Applicants holds no water.

17. The learned Advocate for the Applicants sought to rely on the Judgment passed by this Tribunal in O.A.No.861/2018 decided by this Tribunal on 28.11.2018 wherein the transfer of ACP done by Commissioner of Police was set aside. The factual situation is distinguishable, as in that case, there was no proper compliance of mandatory provisions contained in Proviso to Section

22N(2) of Maharashtra Police Act. Therefore, in the facts and circumstances, the transfer order was quashed.

18. The learned Advocate for the Applicant further sought to place reliance on the Judgment of Hon'ble High Court in ***Writ Petition No.7977/2012 (State of Maharashtra Vs. Purushottam Pandhare) decided on 22<sup>nd</sup> August, 2012.*** In that case, the transfer was quashed on the ground that the competent authority has not recorded any reason for mid-term transfer, and therefore, there being no compliance of Section 4(4)(ii) of ROTA Act, 2005, transfer was quashed. Whereas, in this case, the PEB has recorded the reasons elaborately. Therefore, this authority is of no assistance to the Applicants.

19. True that by impugned transfer orders, the Applicants were transferred on the establishment of Police Academy, which is different and independent entity. The learned Advocate for the Applicant sought to contend that for mid-term transfer, only the Government or DGP is empowered, and therefore, the transfer is unsustainable. He meant to say that Maharashtra Police Academy falls out of Nashik Commissionerate. No doubt, Maharashtra Police Academy is independent entity, but that hardly vitiates transfer orders. It is located at Nashik itself. As stated above, the PEB at Commissionerate level is Competent Authority for such mid-term transfer in public interest and on account of administrative exigency. There is no change of City. Needless to mention that the transfer is an incidence of service and the employee have no vested right to continue at one place. The normal tenure of 5 years of Police Constabulary is provided in law, but that does not take away the right of PEB to transfer constabulary where it is the requirement of administrative exigency and in public interest.

20. In view of above discussion, I have no hesitation to sum-up that the impugned transfer orders has been issued by Respondent No.1 on the basis of unanimous recommendation of PEB at Commissionerate level and the reasons as

well as exigency for such transfers are clearly and elaborately recorded in the meeting of PEB Board dated 30.05.2017. This being the position, it is in consonance with the provisions of Section 22N(2) of Maharashtra Police Act. The PEB at Commissionerate level is competent authority to make such mid-tenure and mid-term transfers of the Applicants. No malafides or arbitrariness can be attributed therein. At the cost of repetition, it is necessary to mention that it was dire need of administrative exigencies as well as from the point of threat perception and in all 35 Police Personnel were transferred. In such situation, if such transfers which are in public interest and made on administrative exigencies are interfered with, it will have serious implications on the entire administration as well as law and order situation. The transfer orders can be interfered with when it is found in contravention of mandatory provisions, arbitrary or *malafide*. At this juncture, it would be appropriate to refer the Judgment of Hon'ble High Court in **V.B. Gadekar, Deputy Engineer Vs MHADA : 2007 (6) BOM CR 579**, wherein it has been held as follows :

“Ordinarily, orders of transfer are made in the exercise of administrative authority to meet the exigencies of service and in public interest. How the Administration has to run its affairs is not a matter which squarely falls in the judicial domain. Unless the orders of transfer were in conflict with Rules and were made for ulterior motives or in patent arbitrary exercise of powers, the Court would decline to interfere in such matter. The transfer could be due to exigencies of service or due to administrative reasons. The Petitioners in the present case have failed to demonstrate as to how the order of transfer has been passed for collateral purposes or is a patent arbitrary exercise of power.”

21. The necessary corollary of the aforesaid discussion leads me to conclude that the Original Application is devoid of merit and deserves to be dismissed. Hence, I pass the following order.

**ORDER**

Both Original Applications are hereby dismissed with no order as to costs.

Sd/-

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

Mumbai

Date : 10.12.2018

Dictation taken by :

S.K. Wamanse.

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