

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

COMMON ORDER IN O.A. NOS. 390 & 391 BOTH OF 2017

(1) **ORIGINAL APPLICATION NO. 390 OF 2017**

DIST. :JALGAON

Vijay Shankarrao Tikole,
Age.49years, Occu. : Service as
Police Inspector, Anti-Terrorist Cell,
S.P. Officer, Ahmednagar,
Tq. & Dist. Ahmednagar.

-- APPLICANT

V E R S U S

1. The State of Maharashtra,
Through its Principal Secretary,
Home Department, Mantralaya,
Mumbai – 32.
2. The Director General of Police,
Shahid Bhagatsingh Marg,
Kulba, Mumbai – 400 001.
3. The Special Inspector General of
Police, Nashik Range, Nashik.
4. The Superintendent of Police,
Ahmednagar.

-- RESPONDENTS

WITH

(1) **ORIGINAL APPLICATION NO. 391 OF 2017**

DIST. :DHULE

Sambhaji s/o Ramrao Patil,
Age. 50 years, Occu. : Presently working as
Police Inspector, Taluka Police Station,
Dhule, Dist. Dhule.

-- APPLICANT

V E R S U S

1. The State of Maharashtra,
Through its Principal Secretary,
Home Department, Mantralaya,
Mumbai – 32.
2. The Director General of Police,
Police Headquarter, Culaba,
Mumbai –1.
3. The Special Inspector General of
Police, Nashik Range, Nashik.
4. The Superintendent of Police,
Dhule, Dist. Dhule.

-- RESPONDENTS

APPEARANCE : Shri V.B. Wagh, learned Advocate for the
applicants in both the matters.

: Shri M.P. Gude, learned Presenting Officer
for the respondents in O.A. no. 390/2017.

: Shri N.U. Yadav, learned Presenting Officer
for the respondents in O.A. no. 391/2017.

CORAM : **Hon'ble Shri B.P. Patil, Member (J)**

DATE : **20th September, 2017**

ORDER

1. Facts and issues involved in both the Original Applications are similar and identical and the applicants have challenged the common order dated 31.5.2017 by which they have been transferred. Therefore, both these OAs are being decided by the common order.

2. The applicants have challenged the impugned order dated 31.5.2017 issued by the res. no. 3 by which they have been transferred from the present post by filing the present O.As.

3. The applicant in O.A. no. 390/2991 Shri Vijay Shankarrao Tikole was appointed as a P.S.I. on 21.3.2000 and was posted in the office of Commissionerate of Police, Zone – 2, Mumbai, after completion of training at Maharashtra Police Academy, Nashik. He was promoted to the post of A.S.I. by the order dated 31.5.2005. Thereafter he worked at various places in that cadre. Thereafter he was promoted to the post of Police Inspector and posted at Flying Squad, C.I.D., Pune on 9.6.2010. Thereafter he was transferred by the order dated 15.2.2014 to the office of Superintendent of Police, Ahmednagar from Flying Squad, C.I.D., Pune. He was relieved from Flying Squad, C.I.D., Pune. In view of the transfer order dated 15.2.2014, the applicant was relieved from Flying Squad, C.I.D., Pune on 18.2.2014. Thereafter he joined his duties in the office of S.P., Ahmednagar on 20.2.2014 and he was posted at Police Station, Supa by the order dated 20.2.2014 issued by the res. no. 4. Thereafter he was posted to Control Room, Ahmednagar from the Police Station, Supa. Thereafter by the order dated 15.6.2015 issued by the res. no. 4 the applicant was transferred to Sai Baba Security, Shirdi from

Control Room, Ahmednagar. While working there he was again transferred to Control Room, Ahmednagar from Sai Baba Security, Shirdi by the order dated 9.7.2015 issued by the res. no. 4. On 4.8.2015, he was transferred to the Economic Offence Wing, Ahmednagar attached to Local Crime Branch from Police Control Room, Ahmednagar. Thereafter by the order dated 26.9.2016 issued by the res. no. 4 he was transferred to Anti Terrorist Cell, Ahmednagar attached to special branch from the Economic Offence Wing, Ahmednagar and since then he was working there.

4. There were no complaints against him and he had not completed normal tenure on the said post, but the res. no. 3 had issued the transfer order dated 31.5.2017. On the basis of the said order dated 31.5.2017 issued by the res. no. 3, the res. no. 4 relieved the applicant w.e.f. 1.6.2017 with a direction to join his new posting at Dhule. It is contention of the applicant that he has not completed his normal tenure of 2 years on the previous posting as well as the tenure of 4 years in the District. It is his contention that the said transfer is midterm and mid tenure transfer and it is in violation of the provisions of the Maharashtra Police Act 2015 (for short the Police Act, 2015). It is his contention that the impugned order has been issued by the res. no. 3 with mala-fide intention without any administrative

exigency. There are no exceptional circumstances to transfer him and therefore, it is illegal. Therefore, he has challenged the impugned transfer order dated 31.5.2017 issued by the res. no. 4.

5. It is the contention of the applicant Shri Sambhaji s/o Ramrao Patilin O.A. no. 391/2017 that he was initially appointed as a P.S.I. vide order dated 24.6.1989. He was promoted to the post of A.S.I. by the order dated 1.5.2001 and he rendered services on that post at various places. He was promoted to the post of P.I. by order dated 17.5.2008 and he worked at several places as a P.I. On 2.6.2014, he was transferred to Dondaicha Police Station, Dist. Dhule from Shirpur Police Station, Dist. Dhule. He joined at Dondaicha on 16.7.2014. By the order dated 24.4.2015 he was transferred to the Office of Superintendent of Police, Jalgaon from Dondaicha Police Station, Dist. Dhule, but that order was modified by order dated 8.6.2015 transferring the applicant on the establishment of S.P., Ahmednagar. He challenged the said orders dated 24.4.2015 as well as the order dated 8.6.2015 before the Hon'ble Tribunal by filing O.A. no. 491/2015. This Tribunal had set aside the said transfer of the applicant from Dondaicha Police Station, Dist. Dhule to Superintendent of Police, Ahmednagar. In pursuance of the order of the Tribunal, the respondent authorities had cancelled the

orders of transfer and had issued the order dated 23.6.2016 cancelling his transfer from Dhule to Ahmednagar and posting him in the Office of the S.P., Dhule. In the general transfers of the year 2017 option of the applicant had been called as he was due for transfer. The applicant has medical problems as well as family problems. His parents are old aged and there is no other person to take care of them and, therefore, he made representation to the res. no. 1 and requested to retain him at Dhule for a period of one year. His representation has been considered by the respondents and he has been retained at Taluka Police Station, Dhule for one year vide order dated 20.4.2017. It is his contention that by the impugned order dtd. 31.5.2017 issued by the res. no. 3 he has been transferred to the office of S.P., Ahmednagar from Taluka Police Station, Dhule. By the order dated 11.6.2017 issued by the res. no. 4 the impugned transfer order dated 31.5.2017 issued by the res. no. 3 has been served upon the applicant and he has been relieved w.e.f. 1.6.2017. It is his contention that the impugned transfer order is in violation of the provisions of the Maharashtra Police Act, 2015 and, therefore, he challenged the same by filing the present O.A.

6. The respondents have filed their affidavit in reply and additional affidavit in reply and resisted the contentions of the

applicants. They have admitted the fact that the applicant Shri Vijay Shankarrao Tikole (O.A. no. 390/17) was transferred to Control Room, Ahmednagar vide order dated 4.8.2015. It is their contention that the Director General of Police, Mumbai had sent anonymous complaint received against the applicant to the respondent No. 4 for enquiry and accordingly respondent No. 4 directed the Additional S.P., Ahmednagar to conduct the enquiry. The Additional S.P., Ahmednagar issued notice to the applicant on 20.9.2016, 29.12.2016 and 13.2.2017 for remaining present for enquiry. In spite of oral and written intimation to the applicant, he never appeared before the Enquiry Officer. The Enquiry Officer conducted the enquiry and submitted his report on 16.5.2017 to the respondent No. 4. It is their contention that the applicant Shri Vijay Shankarrao Tikole (O.A. no. 390/17) was working in Economic Offence Wing. Investigation in three crimes bearing crime No. I 137/2016, I 63/2016 and I 109/2015 were given to him. It was necessary on the part of the applicant to produce the case diary of the said crimes as per rule 225 (2) of Police Manual Part – 3, but the applicant has not produced the said case diary in the Office.

7. The complainant in C.R. No. I 137/2016 has filed a writ petition before the Hon'ble Bombay High Court, Aurangabad

Bench and made allegations against the applicant contending that the investigation has not been carried out by the applicant properly. Therefore, investigation of the said crime has been handed over to the Divisional Police Officer, Ahmednagar. The Enquiry Officer in his report has stated that the behavior, attitude and working of the applicant is harmful to the society in large and the same will badly affect the discipline of the police department. Therefore, the res. no. 4 has made recommendation on 17.5.2017 to the res. no. 3 for taking action and for transfer of the applicant from Ahmednagar, on 17.5.2017. The said report was placed in the meeting of the Range Establishment Board of res. no. 3 held on 31.5.2017 and that time the said board decided to transfer the applicant from Ahmednagar to Dhule on administrative ground to maintain law & order in the society and to protect the image of the Police Department in the society. It is their contention that the impugned order has been issued in view of the provisions of sec. 22 N of the Maharashtra Police Act, 2015.

8. It is contention of the respondents that the applicant Shri Sambhani R. Patil in O.A. no. 391/2017 was transferred on administrative ground. The res. no. 4 directed an enquiry about the behavior of the applicant Shri Sambhaji R. Patil on the basis of news published in the newspaper. On the basis of the report in

the enquiry, conducted by the res. no. 3, the respondent No. 4, recommended the transfer of the applicant. The Police Establishment Board on the basis of the recommendation of res. no. 4 and considering the irresponsible behavior of the applicant transferred the applicant from Dhule to Ahmednagar. The applicant has not accepted the transfer order as he filed sick report on 15.5.2017. It is their contention that the impugned order is illegal one and, therefore, no interference is called for in the order. It is their contention that both the applicants have been relieved from their present posting. They have not joined their new posting, which amounts to misconduct on their part. It is their contention that, show cause notice has been issued to the applicant Shri Sambhaji R. Patil on 19.8.2017. On these grounds they have prayed to reject the O.A.

9. I have heard Shri V.B. Wagh, learned Advocate for the applicants in both the matters, Shri M.P. Gude, learned Presenting Officer for the respondents in O.A. no. 390/2017 and Shri N.U. Yadav, learned Presenting Officer for the respondents in O.A. no. 391/2017. I have perused the documents placed on record.

10. Admittedly both the applicants have been transferred by the impugned order dtd. 31.5.2017. Admittedly, both of them have

been relieved from their present posting but they have not joined their new posting. They have been transferred by the Police Establishment Board at range level. Admittedly their transfers are within the range but out of the District where they are serving presently.

11. Learned Advocate for the applicants has submitted that the impugned order is not in view of the provisions of the sec. 22 N of the Maharashtra Police Act, 2015. He has submitted that both the applicants have not completed their normal tenure of posting at the present posting and their normal tenure of 4 years in the respective Districts and they have been abruptly transferred by the impugned order. He has not submitted that the applicant Shri Patil was due for transfer at the time of general transfer, but he had been retained on his request. But thereafter he has been transferred by the impugned transfer order. He has submitted that the impugned order suffers from malice in law and therefore the same requires to be quashed and set aside.

12. Learned Advocate for the applicants has submitted that the Police Establishment Board at District level has been constituted in view of provisions of sec. 22 J-1 of the Maharashtra Police Act, 2015 and its functions are mentioned in sec. 22 J-2 of the Act. The Police establishment Board at Dist. Level can recommend to the

Police Establishment Board no. 2 regarding the posting and transfers of the police personnel up to the rank of Police Inspector out of the District in view of provisions of Section 22J-2(b) of the Act. He has submitted that as transfer of the applicants are out of District, where they are posted, the recommendation of the Police Establishment Board at Dist. Level is mandatory in view of the said provisions and on the basis of the said recommendations, the Police Establishment Board no. 2 has to effect the transfers of the applicants in view of sec. 22 F. He has submitted that in the instant case the transfer has been effected by the Police Establishment Board at Range Level and therefore, it is illegal as the Police Establishment Board at Range level is not empowered to transfer the applicants, who are Police Inspector in view of sec. 22 J-2 and 22 F of the Maharashtra Police Act, 2015.

13. He has submitted that the impugned order is a midterm and mid tenure transfer order and, therefore, in view of proviso to sec. 22 N (1), the State Government is the competent authority to effect the transfer of the applicants on the grounds specified in clause (a) to (e) thereof. He has submitted that the provisions of sec. 22N (2) are not applicable in the present case and therefore the impugned order is illegal and requires to be quashed.

14. Learned Advocate for the applicants has submitted that the impugned order is against the provisions of Maharashtra Police Act, 2015 and it has been issued mala-fide and with oblique motive. Therefore, it is not maintainable. In support of his submission he has placed reliance on the judgment in the case of **SOMESH TIWARI VS. UNION OF INDIA AND ORS. [AIR 2009 SC 1399]**, wherein it is observed as under :-

“19. 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.

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.”

15. He has further submitted that the provisions of sec. 22N of Police Act has been considered by the Tribunal time and again in various matters and held that the transfer orders of P.S.I. can be made by the Police Establishment Board no. 2. In support of his submission he has placed reliance on the following judgments of the Tribunal :-

- (i) Common judgment delivered by principal seat of this Tribunal at Mumbai in **O.A. nos. 466/2016 (Shri Arun Ramchandra Pawar Vs. the State of Maharashtra &Ors.) and 467/2016 (Shri Shrikant S. Khot Vs. the State of Maharashtra &Ors.) dated 12.7.2016.**
- (ii) Judgment delivered at principal seat of this Tribunal at Mumbai in **O.A. no. 191/2015 (Shri Narayan Mohan Sarangkar Vs. the State of Maharashtra &Ors.) dated 26.10.2015.**
- (iii) Judgment delivered by the Tribunal at Mumbai in **O.A. no. 453 to 456/2016 dated 13.10.2016.**
- (iv) Judgment delivered by Aurangabad Bench in **O.A. no. 177/2015 (RameshwarMohanraoGadeVs. the State of Maharashtra &Ors.) dated 3.8.2015.**

16. The learned Advocate for the applicants has further submitted that the transfer of the applicant Shri Vijay Shankarrao Tikole has been made on the basis of the enquiry conducted by

the res. no. 4 on the basis of anonymous complaint received against him. He has submitted that Govt. has decided not to take cognizance of anonymous complaint received against the Government servants. In support of his submission he has relied on G.R. dated 25.2.2015. He has submitted that on the basis of vague allegations and without giving any opportunity of hearing to the applicant, the impugned order has been issued. Therefore, he prayed to quash and set aside the impugned order.

17. Learned P.O. has submitted that there were serious allegations of misconduct of the applicants. Their conduct and attitude was affecting and damaging the image of the Police Department in the public at large. Therefore, on the basis of request made by the Superintendent of Police of the concerned District, the Police Establishment Board at Range level decided to transfer them and accordingly the impugned order has been issued. He has submitted that the matters i.e. proposal to transfer the applicants have been placed before the Police Establishment Board at Range level in its meeting dtd. 31.5.2017. There were allegations against the applicant Shri Vijay Shankarrao Tikole that he has not maintained the case diary in the various crimes in which he was Investigation Officer. Not only this, but he had not conducted the investigations properly in

Crime no. I 137/2016 and on the basis of directions of Hon'ble High Court he had been relieved from the said investigation and it has been handed over to another Investigation Officer. Not only this, but in an enquiry conducted by the Additional S.P., Ahmednagar, he had not appeared for enquiry in spite of the show cause notices served on him. Therefore, his attitude and behavior was not befitting to the Police Officer and therefore, the res. no. 4 made report to the res. no. 3 and requested for his transfer. The Police Establishment Board at Range level had considered the said aspect and decided to transfer him from Ahmednagar to Dhule. He has further submitted that as regards the case of the applicant Shri Sambhaji s/o Ramrao Patil, it reveals that his conduct was not befitting to the Police Officer. He was violent when he was on police duty. He had quarreled with his colleague Officer when he was on duty and, therefore, news has been published in the newspaper. He had not appeared before the Enquiry Officer and, therefore, report was made for his transfer. Considering the said report, the Police Establishment Board at Range level decided to transfer him as behavior of the applicant Shri Patil was downgrading the image of the Police department.

18. Learned P.O. has submitted that the Police Establishment Board at Range level has decided to transfer the applicants in view

of the proviso to sec. 22 N(2) of the Maharashtra Police Act, 2015 in the public interest and on account of administrative exigencies. He has submitted that Explanation (d) to Section 22 N(2) of the Act provides that Police Establishment Board at Range Level is the competent authority for the transfer of Police personal up to the rank of Police Inspector, within the respective Range and, therefore, the impugned order issued by respondent No. 2 is legal. He has submitted that the impugned order is in accordance with the provisions of law and no exception can be taken to the same. In support of his submission he has placed reliance on the judgment of this Tribunal in **O.A. no. 666/2016 (Vikas Ramlal Thorat Vs. the State of Maharashtra &Ors.) dated 21.4.2017.**

19. Learned P.O. has submitted that both the applicants have been relieved in view of the impugned order, but they have not joined their new postings. The said conduct and behavior of the applicants is against the provisions of Service Rules and, therefore, it amounts to misconduct on their part. He has submitted that a show cause notice has been issued to the applicant Shri Patil by the concerned S.P. In spite of that he has not joined the duties. He has therefore, submitted that the present O.As. may be dismissed considering the said aspect above.

20. On going through the documents, it reveals that, so far as the applicant Shri Vijay S. Tikole is concerned, there were several incidents of misconduct on his part. It was necessary and incumbent on the part of the applicant Shri Vijay Tikole to produce the case diary of the crimes as per rule 225 (2) of Police Manual Part – 3, but he has not produced the said case diary to the Office. Not only this, but the documents on record show that, the complainant in crime bearing C.R. no. I 137/2016 has filed writ petition before the Hon'ble High Court of Judicature Bombay, Bench at Aurangabad and made allegations against the applicant contending that the investigation has not been carried out properly by the applicant. Therefore, investigation of the said crime was handed over to the Sub-Divisional Police Officer, Ahmednagar. It is material to note that in the complaint filed against him, he was summoned by the Additional S.P. for enquiry, but he remained absent. The Enquiry Officer in his report stated that the behavior, attitude and working of the applicant is harmful to the society in large and the said will badly affect the discipline of the police department. Considering the said report, the res. no. 4 has made recommendation to the res. no. 3 on 17.5.2017 for taking action and for transfer of the applicant from Ahmednagar. Meeting of the Police Establishment Board at Range level was held

on 31.5.2017 and the board decided to transfer the applicant from Ahmednagar to Dhule on administrative ground to maintain law & order in the society and to protect the image of the Police Department in the society.

21. Likewise the conduct of the applicant Shri Sambhaji s/o Ramrao Patil shows that it was not befitting to a police officer. He quarreled with his colleague at public place when he was on duty. Therefore, the said matter had been published in the newspaper. An enquiry had been conducted, but the applicant has not appeared before the Enquiry Officer. When the S.D.P.O. visited the place of incident, he noted that the applicant was violent. Thereafter, the applicant had not reported to the duty and reported sick. Therefore, the S.P. made report to the Police Establishment Board at Range level for his transfer to Dhule District. The report/proposal of S.P. regarding transfer of the applicants has been placed before the Police Establishment Board Range level in the meeting dated 31.5.2017. The conduct and behavior of the applicants has been considered by the Members of the Board headed by the Special Inspector General of Police, Nasik Range. They considered the default reports of the applicants and found that the behavior of the applicants is not befitting to the Police Officer. Therefore, in the public interest and on account of

administrative exigency, they have decided to transfer the applicants out of the present Dist. to another Dist. Accordingly, the applicant Shri Vijay Shankarrao Tikole is transferred to Dhule and the applicant Shri Sambhaji s/o Ramrao Patil has been transferred to Ahmednagar by the impugned order dated 31.5.2017.

22. The explanation to sec. 22 N (2) defines the “Competent Authority” for the purpose of sub sec (2) for making transfers of the Police personnel in exceptional circumstances, in public interest and on account of administrative exigencies. In view of Clause (d) of Explanation to Sub Section (2) of Section 22 N the Police Establishment Board at level of Range is “Competent Authority” for transfer of Police personnel up to the rank of Police Inspector within the respective Range. The relevant provision is reproduced here in below :-

“22N. Normal tenure of Police Personnel, and competent authority.

(1) -- -- -- --
 -- -- -- --

(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 purpose of this sub-section, the expression “Competent Authority” shall mean :-

<i>Police Personnel</i>	<i>Competent Authority</i>
(a)-----	-----
(b)-----	-----
(c)-----	-----
(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)-----	-----”

23. The said provision shows that the Police Establishment Board at Range level is empowered to make transfers of the Police Inspectors in exceptional cases in the public interest and on account of administrative exigencies. Therefore, from the said provision, it is clear that the Police Establishment Board at Range level is the “Competent Authority” to effect the transfer of the Police Officer up to the rank of Police Inspectors. Therefore, the provisions of sec. 22 J(2) and sec. 22F on which, the learned Advocate for the applicants has placed reliance, are not attracted in this case. Therefore, I do not find substance in the submission advanced by learned Advocate for the applicants that the impugned order has been issued by the Police Establishment Board at Range level is without any authority and power.

24. The Police Establishment Board at Range level has considered the nature of the complaints against the applicants, their behavior and considering the exceptional circumstances in order to maintain the discipline in the Police Force and to protect the image of the Police Department in the society effected the transfers of the applicants in the public interest and on account of administrative exigencies. I, therefore, do not find any malice on the part of the respondents in issuing the impugned order of transfer.

25. I have gone through the decisions relied by the learned Advocate for the applicants in case of **SOMESH TIWARI VS. UNION OF INDIA AND ORS.[AIR 2009 SC 1399]**. I have no dispute regarding the settled legal principles laid down by the Hon'ble Supreme Court. In the said decision, it has been held that ordinarily transfer order, which is an administrative order should not be interfered with unless there is mala-fideneess on the part of the authority. In the instant cases, there is nothing on record to show that the respondents have issued the impugned order with mala-fide intention. Except the bald allegations of the applicants, there is nothing on record to show that the impugned order has been issued with mala-fide intention. Therefore, in my

opinion, there is no just reason to interfere in the impugned transfer order.

26. I have gone through the various judgments of this Tribunal relied by the learned Advocate for the applicants. On going through the facts in the instant cases and facts in the above cited judgments of the Tribunal, in my opinion, the said judgments are not useful to the applicants as the facts involved in those cases are totally different. Therefore, the same are not useful to the applicants.

27. In view of above discussion, it is clear that the impugned order has been issued by the res. no. 3 on the basis of the decision taken by the Police Establishment Board at Range level. The Police Establishment Board at Range level decided to transfer the applicants in the public interest on account of administrative exigencies and considering the exceptional circumstances mentioned in the minutes of the meeting dtd. 31.5.2017. The said order is in accordance with the provisions of sec. 22 N(2) of the Maharashtra Police Act, 2015. The Police Establishment Board at Range level is "Competent Authority" to make mid tenure and midterm transfers of the applicants. The impugned order is legal and in accordance with the provisions of the law. There is no illegality in the impugned order issued by the res. no. 3.

Therefore, no interference is called for in the impugned order. There is no merit in both the O.As. Hence, the same deserve to be dismissed.

28. In view of above discussion, both the O.As. stand dismissed with no order as to costs.

MEMBER (J)

ARJ-O.A. NOS. 390 & 391 BOTH OF 2017BPP (TRANSFER)