

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 150 OF 2019**

**(Subject – Transfer)**

**DISTRICT : JALGAON**

**Shri Shaikh Nazeer Abdul Rehman,** )  
Age : 56 years, Occu. : Service, )  
(as SDPO, Chalisgaon), )  
R/o : Opp. SDPO Office, )  
Dhule Road, Chalisgaon, Dist. Jalgaon. )

.. **APPLICANT**

**VER S U S**

- 1) **The State of Maharashtra,** )  
Through its Addl. Chief Secretary, )  
Home Department, M.S., )  
Mantralaya, Mumbai-32. )
- 2) **The Director General of Police,** )  
Fort, Mumbai 400 001, )  
Shahid Bhagat Singh Road, )  
Colaba, Mumbai. )
- 3) **The Superintendent of Police,** )  
Jalgaon, S.P. Office, )  
Opp. Bus Stand Jalgaon. )
- 4) **Mr. Uttam Damodar Kadlag,** )  
Age :- 57 years, Occ. Service as a SDPO,)  
R/o C/o Smt. Sindhu Yeshwant Kadam,)  
Matoshri Bangla, Krishna Nagar, )  
Near Mahalaxmi Grosary Shop, Dasak )  
Nashik Road, Nashik, Tq. & Dist. Nashik.)

**..RESPONDENTS**

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**APPEARANCE** : Shri A.S. Deshmukh, Advocate for the  
Applicant.

: Shri Sanjivani K. Deshmukh-Ghate, Presenting Officer for the Respondent Nos. 1 to 3.

: Shri H.P. Jadhav, Advocate for respondent No. 4

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**CORAM** : **JUSTICE A.H. JOSHI, CHAIRMAN.**

**RESERVED ON** : **03.05.2019.**

**PRONOUNCED ON** : **06.05.2019.**  
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**J U D G M E N T**

1. Heard Shri A.S. Deshmukh, learned Advocate for the applicant, Smt. Sanjivani K. Deshmukh-Ghate, learned Presenting Officer for the respondent Nos. 1 to 3 and Shri H.P. Jadhav, learned Advocate for respondent No. 4.

2. The applicant has approached this Tribunal and challenged the transfer order dated 13.02.2019.

3. The applicant has been transfer from his present posting at Chalisgaon to Aurangabad as SDPO (Rural) Sub Division, Aurangabad.

4. The grounds on which the transfer is challenged have been averred in paragraph No. 6 (ix), (x) & (xi), to the effect that in absence of existence of circumstances or contingency referred to

in Section 22N (1) (a) to (e) of the Maharashtra Police Act, transfer is not permissible.

5. The aforesaid averments have been dealt with in the affidavit in reply filed by the State, in which the State has pleaded as follows:-

*“09. With reference to Para no. 6 (viii) of the O.A., I say and submit that the averments raised by the applicant are denied, being incorrect. The State Government vide its Order dated 20.2.2019 has posted Dy. S.P. Shri Uttam Damodar Kadlag at the post of S.D.P.O., Chalisgaon. **Hereto annexed and marked as Exhibit R-1 is the copy of the Government’s order.** However, since there is status quo granted by the Hon’ble Tribunal, Shri Kadlag could not join that place.*

*10. With reference to Para nos. 6 (ix) and 6(x) of the O.A., I say and submit that there is contingency exist in this case in view of Section 22 N (2) i.e. exceptional case, public interest and administrative exigencies, in view of the directives issued by the E.C.I. as has been elaborated hereinabove, under the caption of “Brief facts”. It is submitted that since there exist the aforementioned justified reasons for transferring the applicant, hence he has been transferred after following the due procedure of law as has been prescribed in the Section 22N of the Maharashtra Police Act, 1951. Thus, it is made clear that the competent authority has invoked the aforesaid*

*provisions while making the transfer of the present applicant. Hence, on these factual and legal counts also the averments raised by the applicant are denied.*

*11. With reference to Para no. 6 (xi) of the O.A., I say and submit that averments raised by the applicant are not clear, i.e. to say that it not clear exactly what legal submission the applicant wants to make in this para. However, it is again submitted that as made clear hereinabove, the applicant has been transferred by the Competent transferring authority, i.e. Hon'ble Chief Minister, who holds the portfolio of Hon'ble Minister by invoking the provisions of Section 22N (2) of the Maharashtra Police Act, 1951 in order to comply the directives issued by the E.C.I., which is constitutional body and there is absolutely no mala fide, vindictiveness or violation of any statutory rules. The law is settled that, the transfer can be issued in compliance with the directives issued by the E.C.I. by following the due process of law and there is no illegality while taking such action. Hence, on this count also the averments raised by the applicant are denied.”*

*(Quoted from page Nos. 58 and 59 of paper book of O.A.)*

6. In the same affidavit, the State has also averred while answering the body of facts, the text which reads as follows:-

*“ (ii) It is worthwhile to give the details of various postings held by the applicant so far during his career. It is as under.*

<i>In the capacity of</i>	<i>Period</i>	<i>Place</i>
<i>P.S.I.</i>	<i>15.6.89 to 17.3.94 29.4.94 to 23.10.94 24.10.94 to 15.11.95 16.11.95 to 30.3.99 8.4.99 to 15.5.2000</i>	<i>Mumbai City Nashik Mumbai S.P.U., Thane Dhule</i>
<i>A.P.I.</i>	<i>31.5.2000 to 9.2.2003 16.3.03 to 26.4.2007</i>	<i>S.P.U. Dhule. Dhule</i>
<i>P.I.</i>	<i>5.1.2008 to 1.6.2012 4.6.12 to 14.8.14 2.11.15 to 9.7.18</i>	<i>Jalgaon A.C.B. (He has served in A.C.B. Jalgaon Unit w.e.f. 7.6.2013 to 23.12.2013.) Jalgaon</i>
<i>Dy. S.P.</i>	<i>10.7.2018 till today, as he was not relieved on transfer as on 21.2.2019 and this Hon'ble Tribunal has passed the interim order of maintaining "Status quo" as of 21.2.2019.</i>	<i>SDPO, Chalisgaon Sub Division, Chalisgaon.</i>

(iii) Election Commission of India, letter No. 437/6 /1/INST/ECL/FUNCT/MCC/2019, DATED 16<sup>TH</sup> January, 2019 has issued following directions in view of carrying out the Lok Sabha Elections, 2019 in free and fair atmosphere.

(1) Consistent policy to ensure that officers directly connected with the conduct of elections :

- (i) are not posted in their home district or places where they have served for considerably long period.

(ii) Hence, no officer connected directly with elections shall be allowed to continue in the present district of posting :-

(a) If she/he is posted in her/his home district.

**(b) If she/he has completed three years in that district during last four (4) years or would be completing 3 years on or before 31.5.2019. While calculating the period of three years, promotion to a post within the district is to be counted.**

(c) Care should be taken that the aforementioned officers are not posted in their home districts.

(d) It shall also be ensure that no DEO/RO /ARO / Police Inspector/Sub Inspector or above is posted back or allowed to continue in the A.C. / district where he / she was posted during the General / Bye elections held in the Assembly prior to 31<sup>st</sup> May, 2017.

(e) These instructions shall also be applicable to the police department officers such as the Range IGs, DIGs, Commandants of State Armed Police, SSPs, SPs, Addl. SPs, Sub-Divisional Head of Police, SHOs, Inspectors, Sub-Inspector, RIs/ who are responsible for security arrangement or deployment of police forces in the district at election time.

*(f) The Police Sub-Inspectors and above should not be posted in their home district.*

*(g) If a Police sub-Inspector has completed or would be completing tenure of 3 years out of four years on or before the cutoff date in a police sub-division, then he should be transferred out to a police sub-division which does not fall in the same A.C. If that is not possible due to small size of district, then he/she should be transferred out of the district.”*

(Quoted from page Nos. 52 to 54 of paper book of O.A.)

7. From the facts narrated hereinabove, it shall be competent that the applicant's aggregate tenure at Jalgaon on the post of Police Inspector has commenced from 05.01.2008 to 09.07.2018. As SDPO, Chalisgaon, applicant has worked between 10.07.2018 to 21.02.2019. Thus, the applicant was due and liable to be transferred as per the directives issued by Election Commission, has been transferred.

8. Learned Advocate for the applicant has argued that now vacancy to which the applicant was transferred is filled in due to subsequent order dated 20.02.2019. This Tribunal has perused the order dated 20.02.2019. Shri Sudarshan Mundhe, S.D.P.O.,

Karjat Sub Division, Ahmednagar is transferred as S.D.P.O., Sillod Sub Division, Aurangabad Rural. Hence, argument of learned Advocate for the applicant is not factually correct.

9. Original Application has no merit and dismissed.

10. The parties are directed to bear their own costs.

**PLACE : AURANGABAD.**  
**DATE : 06.05.2019.**

**(A.H. JOSHI)**  
**CHAIRMAN**

**KPB S.B. O.A. No. 150 of 2019 Transfer C.**