

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.666/2016**

**DISTRICT: DHULE**

-----

Vikas s/o Ramlal Thorat,	)	
Age : 54 years, Occ : Service,	)	
(As Asstt. Police Inspector, Dhule),	)	
R/o Police Quarters,	)	
Phashi Pul, Dhule.	)	..APPLICANT

V/s.

1]	The State of Maharashtra,	)	
	Through its Secretary,	)	
	Home Department, M.S.,	)	
	Mantralaya, Mumbai-32.	)	
2]	The Special Inspector General of Police,	)	
	Nashik Range, Nashik.	)	
3]	The Superintendent of Police,	)	
	Dhule.	)	)...RESPONDENTS

-----

APPEARANCE: Shri A.S.Deshmukh learned Advocate  
for the applicant.

Shri N.U.Yadav learned Presenting  
Officer for respondents.

-----

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

-----

DATE : 21-04-2017

-----

**ORDER**

1. By filing this O.A., the applicant has prayed to quash and set aside the transfer order dated 21-07-2016 issued by the respondent no.2.

2. The applicant entered in the service of Police Department as directly recruited Police Sub Inspector (PSI) through the category of Ex-Serviceman on 01-07-2005. He performed duty as P.S.I. from the year 2005 to 2012. In the month of April 2012, he was promoted to the cadre of Assistant Police Inspector (API). Till February 2014, he worked in Jalgaon District. He was transferred to Dhule District under the respondent no.3 by Director General of Police, Maharashtra State, Mumbai vide order dated 15-02-2014. He was relieved by the Superintendent of Police (SP), Jalgaon vide order dated 19-02-2014 to join his new posting in Dhule District. Pursuant to the order of Director General of Police (DGP), he joined Dhule District on 21-02-2014. He was given posting as Reader in the office of respondent no.2 by order dated 03-03-2014. He worked there up to

19-08-2014. On 19-08-2014, respondent no.2 transferred him and posted at Mohadi Police Station. Accordingly, he joined at Mohadi Police Station on 20-08-2014. He completed his tenure of normal posting in Mohadi Police Station in the month of July, 2016, however, he did not complete his tenure of 4 years in Dhule District as provided in Section 22-N(1)(c) of Maharashtra Police Act. He was not due for transfer out of Dhule District. But on 21-07-2016, respondent no.2 issued an order transferring him from Dhule District to Ahmednagar District in contravention of the provisions of Section 22-N(1) and Section 22-N(1)(c) of the Maharashtra Police Act. Applicant has contended that it is a mid-tenure transfer, and therefore, respondent no.2 has no power to transfer him as such powers are vested in the Government only. It is his contention that there was no ground for his mid-term transfer, and therefore, the order under challenge is illegal and untenable. It is further contended by the applicant that on 22-07-2016, respondent no.2 transferred him and posted in Control Room, Dhule. It is his contention that the impugned

order dated 21-07-2016 issued by respondent no.2 is illegal, and therefore, he prayed to quash and set aside the said order.

3. Respondents by filing their affidavit in reply refuted the contention of the applicant. They have denied that the impugned order is against the provisions of Section 22-N(1). They have also denied that the State Government is the only competent authority to make mid-term transfer as provided in proviso to Section 22-N(1) of the Maharashtra Police Act. It is the contention of the respondents that there are several instances of negligence on the part of the applicant while performing his duties. He had no control over the Police Station where he was posted, and therefore, in the public interest and due to administrative exigencies, the applicant was transferred by the respondents on the recommendations of the Police Establishment Board. It is the contention of the respondents that it is a mid-term transfer, and therefore, it has been effected in view of the provisions of Section 22-N(2) of the Maharashtra Police Act. Respondent has issued the order on the basis of the

recommendations of the Police Establishment Board, which is the competent authority to transfer APIs, and therefore, there is no illegality in the order under challenge, and therefore, the respondents have prayed to dismiss the O.A.

4. I have heard Shri A.S.Deshmukh learned Advocate for the applicant and Shri N.U.Yadav learned Presenting Officer (PO) for the respondents. Perused documents on record.

5. Learned Advocate for the applicant has submitted that in the year 2014, the applicant was serving as API in Jalgaon District. By order dated 19-02-2014, he has been transferred to Dhule District. He was posted as Reader in the office of respondent no.3 by order dated 03-03-2014 (page 18). Thereafter, again he was transferred and posted as in charge of Mohadi Police Station, District Dhule by order dated 19-08-2014 (page 19). Applicant has completed his tenure at Mohadi Police Station as he was working there since 20-08-2014. He completed 2 years and 5 months service in Dhule

District. He had not completed his normal tenure in Dhule District but all of a sudden he has been transferred from Dhule District to Ahmednagar District by order of the respondent no.2 dated 21-07-2016 (page 20). It is further argued by him that in view of the provisions of Section 22-N(1)(c) of the Maharashtra Police Act, normal tenure for the Police Officers of the rank of Police Sub Inspector, API and PI shall be of 2 years at a Police Station and 4 years in a District and 8 years in a Range. He has submitted that in view of the said provisions, normal tenure of applicant who was serving as API in the Dhule District was 4 years. It has been argued that the applicant has completed his normal tenure of 2 years at Mohadi Police Station, and he was due for transfer from that Police Station but he did not complete his normal tenure of 4 years in Dhule District, and therefore, respondent no.2 has no authority to transfer the applicant prior to completion of his normal tenure in the District. He has submitted that the proviso to Section 22-N(1) of the Maharashtra Police Act empowers the Government to transfer any Police

Personnel prior to completion of his normal tenure under the circumstances mentioned in clause (a) to (e) of the proviso. Applicant has submitted that the mid-term transfers are governed by the provisions of Sub Section 2 of Section 22-N of the Act.

6. It is further argued on behalf of the applicant that the proviso to Sub Section 2 of Section 22-N provides that in case of any serious complaint, irregularity, law and order problem the highest Competent Authority can make the transfer of any Police Personnel without any recommendation of the concerned Police Establishment Board. He has submitted that even if it is assumed that the case of the applicant falls under proviso to Section 22-N(1) of the Maharashtra Police Act then the highest competent authority i.e. Chief Minister or Government is competent authority to effect transfer of the applicant. He has submitted that respondent no.2 has not considered provisions of Section 22-N(1) as well as the proviso to it and illegally issued the impugned order.

7. Applicant has further argued that the provisions of Section 22-N(1) deal with transfer of Police Personnel who had completed normal tenure. Its proviso deals with the mid tenure transfer. Sub Section 2 of the Section 22-N deals with the mid-term transfers but the respondent no.2 has misconstrued the difference between such provisions, and therefore, the impugned order came to be passed. He has submitted that the Tribunal had considered the provisions of Section 22-N and amendment made therein in detail while deciding O.A.No.177/2015 and the Review Application No.06/2015 filed in O.A.No.177/2015. He has placed reliance on it.

8. Learned Advocate for the applicant has further argued that the provisions of statute can be interpreted harmoniously to serve the object of the enactment. In support of his submission, he has placed reliance on the judgment delivered by the Hon'ble Supreme Court in the matter of **British Airways Pic V/s. Union of India** reported in [2002 (AIR) SC 391] wherein it has been observed in paragraph 7, as under:



"7. While interpreting a statute the court should try to sustain its validity and give such meaning to the provisions which advance the object sought to be achieved by the enactment. The court cannot approach the enactment with a view to pick holes or to search for defects of drafting which make its working impossible. It is a cardinal principle of construction of a statute that effort should be made in construing the different provisions so that each provision will have its play and in the event of any conflict a harmonious construction should be given. The well-known principle of harmonious construction is that effect shall be given to all the provisions and for that any provision of the statute should be construed with reference to the other provisions so as to make it workable. A particular provision cannot be picked up and interpreted to defeat another provision made in that behalf under the statute. It is the duty of the court to make such construction of a statute which shall suppress the mischief and advance the remedy. While interpreting

*a statute the courts are required to keep in mind the consequences which are likely to flow upon the intended interpretation."*

Learned Advocate for the applicant has also relied on the observations of the judgment delivered by Hon'ble the Supreme Court in paragraph no.10 in the matter of **Satheedevi V/s. Prasanna and another** reported in [2010 AIR (SC) 2777] wherein it has been observed as follows:

*"10. Before proceeding further, we may notice two well recognized rules of interpretation of statutes. The first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself. If the words used are capable of one construction, only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act. The words used in the material provisions of the statute must be interpreted in their plain grammatical*

*meaning and it is only when such words are capable of two constructions that the question of giving effect to the policy or object of the Act can legitimately arise – Kanai Lal Sur V. Paramnidhi Sadhukhan 1958 SCR 360. The other important rule of interpretation is that the Court cannot rewrite, recast or reframe the legislation because it has no power to do so. The Court cannot add words to a statute or read words which are not therein it. Even if there is a defect or an omission in the statute, the Court cannot correct the defect or supply the omission. – Union of India v. Deoki Nandan Aggarwal 1992 Supp (1) SCC 323, Shyam Kishori Devi V. Patna Municipal Corporation (1966) 3 SCR 366."*

9. Learned Advocate for the applicant has further argued that even if it is considered that the transfer of the applicant is mid-tenure and mid-term, in that case also highest authority i.e. Chief Minister or the Home Minister is the competent authority to transfer the applicant, and therefore, the order under challenge issued by respondent no.2 is not legal.

10. Learned P.O. has submitted that the impugned order issued by the respondent no.2 is perfectly legal and within the ambit of provisions of Section 22-N of the Maharashtra Police Act. He has submitted that terms 'general transfer and 'mid-term transfer' have been defined in Section 2(6A) and 2(6B) of the Maharashtra Police Act. He has submitted that 'general transfer' means "posting of a 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" and the 'mid-term transfer' means "transfer of a Police Personnel in the Police Force other than the General Transfer". He has submitted that the term mid-tenure transfer has not been defined in the Act. He has further submitted that the transfer of the applicant is a mid-term transfer, and therefore, it is governed by Section 22-N(2) of the Act. In view of the said provision, Police Establishment Board at the level of Range is competent authority to transfer APIs. Accordingly, said Board has decided to transfer the

applicant in public interest and on account of administrative exigencies. On the basis of recommendation of Police Establishment Board, respondent no.2 issued order transferring the applicant.

11. Learned P.O. has submitted that there were serious lapses on the part of the applicant while discharging his duties. While performing duty in the Police Station, he had no control over the Police Station. Therefore, in the public interest and on account of administrative exigencies, applicant has been transferred by the impugned order. The impugned order is legally perfect, and therefore, he has prayed to dismiss the O.A.

12. Admittedly, the applicant was transferred to Dhule district from Jalgaon in view of the order dated 19-02-2014. Accordingly, he was posted as Reader in the office of respondent no.3 by order dated 03-03-2014 (page 18). Thereafter, again he was transferred at Mohadi Police Station in view of order dated 19-08-2014 (page 19). Accordingly, he took charge of the said posting on 20-08-2014. Admittedly, the applicant has completed

his normal tenure at Police Station Mohadi as provided under Section 22-N(1)(c) of the Act. It is also a fact that he has not completed tenure of 4 years at Dhule when the impugned order came to be passed.

13. The applicant has come up with a case that his case comes under Section 22-N(1)(c) and his transfer is mid-tenure, and therefore, the State Government, as provided under Section 22-N of the Maharashtra Police Act, is the only competent authority to transfer him and respondent no.2 i.e. the Special Inspector General of Police, Nashik has no power to issue such transfer order. It is the contention of the respondent authorities that it is the mid-term transfer, and therefore, the same is governed by Section 22-N(2) of the Maharashtra Police Act, and hence, it is submitted that order issued by the respondent no.2 on the recommendations of Police Establishment Board is perfectly legal.

14. In order to consider the impugned order of transfer of the applicant, it is necessary to consider the provisions of Maharashtra Police Act keeping in mind the principle

laid down by Hon'ble the Apex Court in the above said decisions referred to by the learned Advocate for the applicant. By Maharashtra Act No.24/2014 dated 25-06-2014 (w.e.f. 01-02-2014), Chapter II-A consisting Section 22(B) to Section 22(T) came to be inserted in the Maharashtra Police Act. Provisions of Section 2(6A) and 2(6B) are also inserted by the same amendment Act. Maharashtra Police Act has been again amended in the year 2015 by the Maharashtra Police (Amendment) Act, 2015 (Maharashtra Act 11 of 2015) dated 06-04-2015 (w.e.f. 16-02-2015). Accordingly, Section 2(6A), Section 22-N(1) came to be amended.

15. While deciding the present case, the provisions of Section 2(6A), 2(6B), Section 22-N(1) and 22-N(2) are material and same need to be considered. Sections 2(6A) and 2(6B) define terms general transfer and mid-term transfer as follows:

*"Section 2(6A) : "General Transfer" means posting of a 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].*

*Section 2(6B) : "Mid-Term Transfer" means transfer of a Police Personnel in the Police Force other than the General Transfer."*

16. Provisions of Section 22-N of the Act are also material. Therefore, same are reproduced as under:

**22 (N). Normal tenure of Police Personnel, and Competent Authority.-**

(1) Police Officers in the Police Force shall have a normal tenure as mentioned below, subject to the promotion or suspension:-

(a) for Police Personnel of and above the rank of Deputy Superintendent of Police or Assistant Commissioner of Police a normal tenure shall be of two years at one place of posting;

(b) for Police Constabulary a normal tenure shall be of five years at one place of posting;

(c) for Police Officers of the rank of Police Sub-Inspector, Assistant Police Inspector and Police Inspector a normal tenure shall be of two years at a



Police Station or Branch, four years in a District and eight years in Range, however, for the Local Crime Branch and Special Branch in a District and the Crime Branch and Special Branch in a Commissionerate, a normal tenure shall be of three years;

(d) for Police Officers of the rank of Police Sub-Inspector, Assistant Police Inspector and Police Inspector a normal tenure shall be of six years at Commissionerates other than Mumbai, and eight years at Mumbai Commissionerate;

(e) for Police Officers of the rank of Police Sub-Inspector, Assistant Police Inspector and Police Inspector in Specialized Agencies a normal tenure shall be of three years.

The competent Authority for the general transfer shall be as follows, namely :-

<b>Police Personnel</b>		<b>Competent Authority</b>	
(a)	Officers of the Indian Police Service.	Chief Minister	
(b)	Maharashtra Police Service Officers of and Above the rank of Deputy Superintendent of Police	Home Minister	
(c)	Officers up to Police Inspector	(a)	Police Establishment Board No. 2.
		(b)	Police Establishment Board at Range Level.
		(c)	Police Establishment Board at Commissionerate Level:

(d)		(d)	Police Establishment Board at District Level.
(e)		(e)	Police Establishment Board at the Level of Specialized Agency.

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 :

Explanation.- For the purposes of this sub-section, the expression "Competent Authority" shall mean :-

<b>Police Personnel</b>		<b>Competent Authority</b>
(a)	Officers of the Indian Police Service	Chief Minister;
(b)	Maharashtra Police Service Officers of and above the rank of Deputy Superintendent of Police.	Home Minister;
(c)	Police Personnel upto the Rank Police Inspector for transfer out of the respective Range or Commissionerate or Specialized Agency.	Police Establishment Board No.2;
(d)	Police Personnel upto the Rank 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)	Police Personnel upto the Rank Police Inspector for transfer within the District.	Police Establishment Board at District Level:

Provided that, in case of any serious complaint, irregularity, law and order problem the highest Competent Authority can make the transfer of any Police Personnel without any recommendation of the concerned Police Establishment Board."

17. On plain reading of Sections 2(6A) and 2(6B), it is crystal clear that "General Transfer" means posting of a 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, while "Mid-Term Transfer" means transfer of a Police Personnel in the Police Force other than the General Transfer. In the Act the term mid-term transfer has not been defined. Therefore, transfer of the Police Personnel can be made by way of general transfer or mid-term transfer only. Sub-Section 22-N(1) provides for general transfer of the Police Personnel and the competent authority for making such transfers. Proviso to Sub-Section 1 of the Section 22-N confers power on the Government to transfer any Police Personnel prior to completion of his tenure in the circumstances as mentioned in Clause (a) to (e) of Section 22-N(1). Provision of Sub Section 2 of Section 22-N authorizes competent authority mentioned therein to make mid-term transfer of Police Personnel in addition to the grounds mentioned in Sub Section (1) of Section 22-N in exceptional cases in public interest and on account of administrative exigencies. The competent authority as

provided in explanation to Sub Section 2 of Section 22-N can effect transfer of Police Personnel by way of mid-term transfer in exceptional cases, in public interest and on account of administrative exigencies. In view of the explanation given below Sub Section 2 of Section 22-N, the Police Establishment Board at the level of Range is the competent authority for the Police Personnel up to the rank of Police Inspector for making transfer within the Range.

18. In the instant case, Police Establishment Board for the Nashik Range had held meeting on 16-07-2016. The minutes of the meeting are on record. It has considered letter of District Superintendent of Police, Dhule wherein request to transfer Applicant Shri Vikas Ramlal Thorat as well as one Yunus Bhikari Mulla posted at Mohadi Police Station mentioning the instances of lapses on their part in discharging duties and the fact that they have no control over the Police Station and because of inaction on their part riots were committed within jurisdiction of Mohadi Police Station, was made. It was also mentioned that they were punished by the S.P. on account of lapses

on their part. Considering the report of the District Superintendent of Police, Dhule, the Police Establishment Board was of the opinion that in the public interest and on account of administrative exigency, it will be proper to transfer the applicant from Dhule District to Ahmednagar District in view of the provisions of Section 22-N(2) of the Maharashtra Police Act. Accordingly, the Police Establishment Board recommended their transfer. In pursuance to the said recommendations respondent no.2 issued the impugned transfer order. In view of Sub Section (2) of Section 22-N, the Police Establishment Board at the Range level is the competent authority to make transfer. Transfer of the applicant is the mid-term transfer, and therefore, in my view the impugned order is perfectly legal and it is not in contravention of the provisions of Section 22-N (1) or (2) of the Act.

19. Said order is not made under the proviso of Section 22-N(1) of the Act as the minutes of the meeting of the Police Establishment Board show that it has taken recourse to the Sub Section (2) of Section 22-N and not to the Section (1) of Section 22-N of the Act. Therefore, I do

not find any substance in the submissions advanced by the learned Advocate for the applicant in that regard.

20. Learned Advocate for the applicant has submitted that the impugned order is a mid-tenure as well as mid-term transfer order. Therefore, the State Government which is the highest authority is the only competent authority to transfer the applicant in such cases. I do not find any substance in his submissions in view of the fact that respondent no.2 has issued the order on the basis of decision taken by the Police Establishment Board at the Range level resorting to provisions of the proviso to Section 22-N(2) of the Act. The Police Establishment Board is the competent transferring authority for such transfers. Therefore, the impugned order is legal one. Considering the abovesaid facts and circumstances of the case, in my opinion, there is no illegality in the impugned order. I find no merit in the case. Hence, O.A. must fail. Consequently, O.A. is dismissed with no order as to costs.

**MEMBER (J)**