

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 258 OF 2024
(Subject – Transfer)**

**DISTRICT : Chhatrapati
Sambhajanagar**

Rohit S/o Kailas Gangurde,)
Age : 34 years, Occu. : API,)
R/o Cidco, Chattrapati Sambhajanagar.)

.... **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through its Principal Secretary,)
Home Department,)
Mantralaya, Mumbai-400 032.)
2. **The Director General of Police,**)
Maharashtra State, Mumbai,)
Shahid Bhagatsing Marg,)
Colaba, Mumbai- 400001.)
3. **The Additional Director of Police,**)
Maharashtra State, Mumbai, Shahid)
Bhagatsing Marg, Colaba, Mumbai-400001.)
4. **The Commissioner of Police,**)
Chattrapati Sambhajanagar,)
Dist. Chattrapati Sambhajanagar.)

... RESPONDENTS

APPEARANCE : Shri M.S. Mahajan, Counsel for Applicant.

: Shri M.B. Bharaswadkar, Chief Presenting
Officer for respondent authorities.

CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)

DATE : 24.04.2024

ORAL - ORDER

1. Heard Shri M.S. Mahajan, learned counsel appearing for the applicant and Shri M.B. Bharaswadkar, learned Chief Presenting Officer appearing for respondent authorities.

2. The present Original Application is disposed of finally with the consent of both the parties at the admission stage.

3. Learned counsel for the applicant submits additional affidavit of the applicant to the extent that the applicant has not been relieved from Jinsi Police Station to join the place of transfer i.e. Traffic Department, Chh. Sambhajinagar as per the order dated 26.01.2024. Same is taken on record and copy thereof is given to other side.

4. The present matter is about the transfer of the applicant, who is working as Police Sub-Inspector in terms of the directives issued by the Election Commission of India and by impugned order dated 26.02.2024 in terms of the transfer policy as declared by the Election Commission of India, the applicant came to be transferred from Chh. Sambhajinagar City to Nashik City. Hence, the present Original Application.

5. Learned counsel for the applicant submits that by order dated 29.10.2020, the applicant came to be transferred

from Gondiya to Chh. Sambhajinagar city and thereafter by order dated 18.08.2023, he came to be transferred from City Chowk Police Station to Jinsi Police Station, Chh. Sambhajinagar and within a period of 08 months, the applicant came to be transferred from Chh. Sambhajinagar City to Nashik City mid-tenure under the pretext of the directives issued by the Election Commission of India.

6. Learned counsel for the applicant submits that by order dated 26.01.2024, in terms of the directives issued by the Election Commission of India declaring thereby the transfer policy, the applicant came to be transferred from Jinsi Police Station to Traffic Department, Chh. Sambhajinagar. Learned counsel has fairly accepted that the applicant has not joined his place of transfer at Traffic Department, Chh. Sambhajinagar. The reason thereof is that the applicant has not been relieved by the department from Jinsi Police Station to allow him to join at Traffic Department, Chh. Sambhajinagar. Learned counsel submits that the applicant is not at fault and as such, it is necessary to hold that at the time of passing of impugned order of transfer dated 26.02.2024, the applicant was holding non-executive post being attached to the Traffic Branch, Chh. Sambhajinagar, though not joined. Learned counsel has placed

his reliance on a case of **Raj Bahadur Sharma (dead) through Lrs. Vs. Union of India and Ors., reported in AIR 1998 Supreme Court 2393**, wherein the Hon'ble Supreme Court has dealt with the issue of non-joining of the transfer place for want of relieving order and discussed in detail the consequences thereof.

7. Learned counsel for the applicant submits that though Chh. Sambhajinagar is the home district of the applicant, however, considering the above aspect, his case is not covered by the transfer policy as declared by the Election Commission of India. Learned counsel thus submits that the present Original Application deserves to be allowed.

8. Learned Chief Presenting Officer submits that there is no substance in the present Original Application and the same is liable to be dismissed. Learned C.P.O. submits that in terms of the directives issued by the Election Commission of India by way of communication dated 21.12.2023, the police officer connected directly with the elections shall not be allowed to continue in the same district under the following two conditions (i) if she / he is posted in her / his home district and (ii) if she/he has completed three years in that district during last 4 years or would be completing 3 years on or before 30th June, 2024. Learned C.P.O.

submits that in many other matters raising the similar issue at the time of disposing of these matters this Tribunal has taken a view that these conditions are required to be considered separately, since those conditions operates in different context. Learned C.P.O. submits that even though by order dated 26.01.2024 the applicant came to be transferred from Jinsi Police Station to Traffic Department, Commissioner Office, Chh. Sambhajinagar, however, it further appears that no effect has been given to the said order and as such, the fact remains that the applicant till passing of the impugned order of transfer was holding the executive post being attached to Jinsi Police Station. Learned C.P.O. submits that the said fact is also admitted by the applicant even in his additional affidavit filed today.

9. Learned Chief Presenting Officer submits that in terms of para No. 5.3 of the said directives issued by the Election Commission of India by way of communication dated 21.12.2023, all the police officers as detailed in the said para are responsible for security arrangement or deployment of Police Forces in the district at election time. Accordingly, the Police Sub-Inspectors and above should not be continued in their home district.

10. Learned Chief Presenting Officer submits that in the instant case the applicant is holding an executive post being attached to the Jinsi Police Station as Police Sub-Inspector and in terms of the said directives, he cannot be posted in his home district during election time. Thus the impugned order of transfer is proper, correct and legal and no interference is called for. There is no substance in the present Original Application and the same is liable to be dismissed.

11. Even though this Tribunal has initially taken a view that the directives issued by the Election Commission of India are required to be considered in its entirety and not in isolation and accordingly read both the conditions together. However, after considering the entire aspect of the transfer policy as declared by the Election Commission of India, it is clear that the two conditions as mentioned in para No. 5.3 of the said directives issued by the Election Commission of India are required to be considered separately. The same is obvious for the reason that even if a police officer is posted in a particular district and if it is his home district, irrespective of his tenure, he is required to be transferred in terms of the directives issued by the Election Commission of India alone. Further in terms of the condition No. 5.3(ii) if such a Police officer has completed three years tenure

out of four years' service in the same district, he is required to be transferred irrespective of the fact that it is his home district or not.

12. In the instant case undisputedly Chh. Sambhajinagar is the home district of the applicant. Though the applicant came to be transferred from Gondiya i.e. Naxalite area to Chh. Sambhajinagar and after considering his transfer in terms of the G.R. issued in respect of the employee, who is working at Naxalite area, however in terms of the directives issued by the Election Commission of India, his case is required to be considered afresh.

13. The applicant is admittedly posted at Jinsi Police Station and even at the time of passing impugned order, he was holding the said post of Police Sub-Inspector being attached to the Jinsi Police Station, Chh. Sambhajinagar, which is his home district. Though by order dated 26.01.2024 the applicant came to be transferred from Jinsi Police Station to Traffic Department, Chh. Sambhajinagar, however, it appears that the department has not relieved him for the reasons best known to the department. Consequently, the applicant remained posted at

Jinsi Police Station till issuance of impugned order of his transfer from Chh. Sambhajinagar to Nashik.

14. In a case of **Raj Bahadur Sharma (dead) through Lrs. Vs. Union of India and Ors., reported in AIR 1998 Supreme Court 2393** relied upon by learned counsel for the applicant the Hon'ble Supreme Court has dealt with the issue of non-joining of the duties for want of relieving order. However, the said observations have been made in different context and it is held that the employee cannot be said to be at fault in not joining the transferred place and thus entitled for the salary to the extent of 50% for the period in question. In the instant case even assuming that the applicant could not join the place of transfer i.e. Traffic Department, Chh. Sambhajinagar for want of relieving order, however, the fact would remain that he was holding the executing post being attached to the Jinsi Police Station, Chh. Sambhajinagar and the same has not been denied by the applicant.

15. It is clear from the directives issued by the Election Commission of India particularly para No. 5.3 that the Police Sub-Inspectors and above should not be posted in their home district. The said instructions as detailed in the aforesaid

communication dated 21.12.2023 issued by the Election Commission of India squarely applicable to the Police officers particularly the applicant, who is working as Police Sub-Inspector.

16. I am fortified by the views expressed by the Division Bench of Hon'ble High Court of Bombay in a case of **Dattatraya R. Karale Vs. Shekhar Balasaheb Genbhau and Ors.**, reported in **2024 SCC OnLine Bom 868**, wherein the Hon'ble High Court has dealt with the similar issue.

17. In view of above, I do not find any substance in the present Original Application and no interference is required in the impugned order of transfer. The Original Application is liable to be dismissed. Hence, the following order :-

ORDER

- (i) Original Application No. 258/2024 is hereby dismissed.
- (ii) In the circumstances there shall be no order as to costs.
- (iii) Original Application is accordingly disposed of.

PLACE : Aurangabad.
DATE : 24.04.2024

(Justice V.K. Jadhav)
Member (J)