

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 1354 OF 2024
(Subject:- Transfer)**

DISTRICT:- CHH. SAMBHAJINAGAR

Rahul S/o Haribhau Khatavkar,)
Age: 46 Years, Occu. Service as)
Police Inspector, Protection of Civil Rights)
Aurangabad Division District-Aurangabad)
R/o: A2-4, Kasliwal Purva Apt, Chikalthana,)
Near Airport, Aurangabad.)...**APPLICANT**

V E R S U S

- 1. The State of Maharashtra**)
Home Department,)
Through its Secretary,)
Mantralaya Mumbai-400 001.)
- 2. The Director General of Police**)
Office at Shahid Bhagatsing Marg,)
Colaba, Mumbai-400 001.)
- 3. The Inspector General of Police**)
(Establishment) Office at Maharashtra)
State Police Head Quarter)
Office at Shahid Bhagatsing Marg,)
Colaba, Mumbai-400 001.)
- 4. The Superintendent of Police,**)
Protection of Civil Rights,)
Chh. Sambhajinagar Regions Panchavati)
Chowk, Chh. Sambhajinagar.)
- 5. The Additional Director General of Police**)
[ADGP] Protection of Civil Rights MS Mumbai)
Office at DD Building, 4th Floor Old Jakat)
Naka Fort Mumbai 400 001.)
- 6. The Chief Election Officer,**)
State of Maharashtra,)
General Administration Department,)
Office at Madam Kama Marg,)
Hutatma Rajguru Chowk,)
Mumbai 400 001.)...**RESPONDENTS**
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APPEARANCE : Shri P.M. Nagargoje, learned counsel for
the applicants.
: Shri D.M. Hange, learned Presenting
Officer for the respondent authorities.

CORAM : **Shri A.N. Karmarkar, Member (J)**

RESERVED ON : **05.02.2025.**

PRONOUNCED ON : **24.03.2025.**

ORDER

By filing this Original Application, the applicant is seeking relief of quashing and setting aside the impugned transfer order dated 30.10.2024 passed by respondent No.3, by which the applicant was transferred from Protection of Civil Rights (in short 'P.C.R') Aurangabad Division to Mumbai City and repost him on same post.

2. The applicant was initially joined as Police Sub-Inspector (PSI). Subsequently he was promoted as Assistant Police Inspector (API). When he was posted at Latur Police Training Centre, he was promoted as Police Inspector (PI). The applicant was transferred on 17.12.2021 from Mumbai City to PCR. The respondent No.5 posted applicant to PCR Unit, Aurangabad on 04.07.2023. As per the circular dated 16.02.2009 issued by Home Department, the Protection of Civil Rights' post is not connected

with election duty. As per the guidelines of Election Commission of India (in short 'ECI') dated 31.07.2024, the cutoff date for transfer was 20.08.2024. Clause No. 5.3 of the ECI guidelines dated 31.07.2024 speaks about transfer of police officers who have completed 3 years or would be completing 3 years on or before cutoff date i.e. 30.11.2024. This applicant has not completed 3 years in PCR unit at Aurangabad. Impugned order dated 30.10.2024 does not show reference in respect of extension of time for transfer after deadline as given by the ECI guidelines. Applicant's home district is not Aurangabad. It was mandatory on the part of respondent Nos. 1 to 3 to take prior permission of ECI after implementation of Code of Conduct w.e.f. 15.10.2024.

The Hon'ble Supreme Court of India has also held that only persons connected with election duty shall be transferable in view of ECI guidelines. For that purpose he has relied in a case of **R.K. Mittal Vs. State of UP**, reported in **2004 (3) AWC Page No. 1917**. The impugned order does not show that such permission from ECI was taken. The applicant has raised ground that he was working on non-executive post and he is not transferrable in view of ECI guidelines. So impugned order of transfer is mid-term and against the guidelines of ECI. It also needs to be quashed and set aside as the transfer is not effected before the cutoff date i.e. 20.08.2024. Another ground is that the respondents have not followed

procedure as prescribed under Section 22 of Maharashtra Police Act, and by holding PEB-1 and PEC-2 meetings. Second ground is that the transfer of police officers as per the ECI guidelines are to be treated as deemed deputation. The impugned order suffers from malafide and arbitrariness.

3. The respondent No.2 has filed affidavit in reply (page No.132). According to this respondent, as per direction of ECI dated 31.07.2024, the police officer who is directly connected with election duty and who has completed 3 years in that revenue district or would be completing 3 years on or before 30.11.2024 is to be transferred. Secondly, the police officer who has been posted in home district is also to be transferred. The respondent No.2 has transferred 111 P.Is. from Mumbai Police Commissionerate as per direction of ECI with approval of Chief Electoral Officer, Maharashtra State (in short 'C.E.O, M.S.') given on 04.10.2024. While giving approval, the C.E.O. has directed for filling up posts fallen vacant at Mumbai due to these transfers at the earliest. As per ECI letter dated 19.10.2024, while counting the period of 3 years in a commissionerate, an entire tenure of the concerned officers spent in all revenue districts in the commissionerate should be considered and should be transferred. Accordingly, this office has sought information from the Police Commissionerates with multiple districts which are at Mumbai, Mira Bhayander

Vasai Virar and Navi Mumbai. It is also contended that the information submitted by these Commissionerates was placed before the PEB-2 which recommended transfer and posting of eligible Police Inspectors from respective Commissionerates. After obtaining approval from CEO, the respondent No.2 effected transfer of 161 P.Is. from Mumbai (in addition to earlier transfer of 111 P.Is.), 38 P.Is. from Mira Bhayander, Vasai Virar and 22 P.Is. from Navi Mumbai Police Commissionerate and posted them outside. The State Government has also instructed by letter dated 29.10.2024 for filling up the posts fallen vacant due to transfers of P.Is. out of Mumbai at the earliest.

4. Due to transfer of in all 272 P.Is. (111+161) from Mumbai, huge vacancy was created in Mumbai Police Commissionerate. It was required to be filled in so that election can be effected properly by maintaining law and order. Secondly, the C.E.O, M.S. has also directed to fill up vacancies in Mumbai. Same instructions were given by the State Government. So in order to fill up vacancies in Mumbai, the P.Is. from Police Training Centers, CID and PCR came to be transferred to Mumbai Police Commissionerate to address the administrative exigencies under exceptional circumstances and also in public interest. The respondents have also complied the direction of ECI.

5. This respondent No.2 has issued letter to all the Unit Commanders on 31.10.2024 asking officers who were transferred to submit request letter seeking transfer/change in the transfer order after reporting to the new place of posting and the office will examine applications and suitable decision would be taken. According to this respondent, PEB-2 is the Competent Authority to effect mid-term transfer of the P.Is. The impugned order was passed by PEB-2 due to administrative exigencies, in public interest and under exceptional circumstances by exercising the power under Section 22N(2) of Maharashtra Police Act, 1951.

It is also contended that during Loksabha Election some officers objected their transfers by filing the Original Applications before the Principal Seat of this Tribunal at Mumbai, who has delivered the judgment by common order dated 19.07.2024 and allowed the O.As. This respondent has challenged the common order in one of the Original Application bearing No. 269/2024, whereby transfer orders issued by this office were reversed. This respondent No.2 filed Writ Petition bearing No. 11740/2024 before the Hon'ble High Court. The Hon'ble High Court by order dated 20.08.2024 has stayed the common order dated 19.07.2024 passed by Principal Seat of this Tribunal at Mumbai. Even during the Assembly Election 2024, some officers approached the Principal Seat of this Tribunal at Mumbai against the transfer

orders and the Tribunal was pleased to stay the transfer orders of some of the applicants. The respondent No.2 has preferred Writ Petition against it. The Police Officers who were got stay from the MAT, Mumbai made a statement that they would join transferred places. In case of the remaining P.I., the Hon'ble High Court has directed the respondent No.2 to decide the representation of one P.I. Khedkar.

The applicant has not filed affidavit in rejoinder.

6. I have heard Shri P.M. Nagargoje, learned counsel for the applicant and Shri D.M. Hange, learned Presenting Officer for the respondent authorities. Both the parties have submitted as per their respective contentions.

7. The applicant has filed written notes of argument. It is the submission of the learned counsel for the applicant that the impugned order of transfer dated 30.10.2024 is contrary to Section 22 of Maharashtra Police Act, 1951 and against the guidelines of ECI dated 31.07.2024. According to him, the applicant was working on non-executive post from 04.07.2023 till the impugned order dated 30.10.2024 and the said post at Aurangabad is vacant. Actually this applicant was not connected with the election duty as per the circular dated 16.02.2009 of Home Department. The applicant is transferred within eight months. The Original

Application No. 688 of 2024 of Police Sub Inspectors namely Ganesh Raut and Sagar Thakare who were also not connected with election duty is allowed and their transfer dated 26.02.2024 is set aside. According to applicant, provision of Section 22N of the Maharashtra Police Act needs to be interpreted beneficial to the transferees. According to applicant the impugned order can be said to be 'deemed deputation' or 'temporary transfer' till the period of election is over. Section 22N(2) of Maharashtra Police Act is silent in respect of transfer of police officers during election.

8. Learned Presenting Officer has submitted that only guidelines of ECI are not ground for transfer. Actually about 111 P.Is. were transferred as per the directions of ECI. Subsequently, 161 more P.Is. were transferred from Mira Bhayander, Vasai Virar and 22 P.Is. from Navi Mumbai Police Commissionerate and posted them outside of Police Commissionerate, Mumbai that too after approval of C.E.O. So this respondent wanted to fill up the vacancies in Mumbai. So as per recommendation of PEB-2 this applicant was transferred under Section 22N(2) of Maharashtra Police Act, 1951. According to him for the purpose of faire election such transfers were necessary. Secondly the applicant could not show any malafide on the part of respondents while passing impugned order.

Learned P.O. has invited my attention to page No. 145 to show that the CEO, M.S. has directed to fill up the vacant post in Mumbai. So the impugned order of transfer was passed in public interest and due to administrative exigencies and that as per the recommendation of PEB-2.

9. It is undisputed fact that the applicant was working as P.I. and was posted at PCR, Aurangabad as per order dated 04.07.2023. It is also undisputed fact that it is mid-term transfer of the applicant. He has come with the case that the impugned order of transfer is contrary to Section 22 of Maharashtra Police Act, 1951 and against the guidelines of ECI dated 31.07.2024. On the other hand respondents have come with the case that in view of the guidelines of ECI dated 31.07.2024, several P.Is. transferred outside Mumbai and while giving approval to it by Chief Election Officer, Maharashtra State (CEO, MS) the respondents were directed to fill up the posts fallen vacant at Mumbai. Accordingly, as per recommendation of PEB-2 this applicant was transferred due to administrative exigencies and in the public interest.

One of the ground raised by the applicant for challenging this order is that the procedure prescribed under Section 22 of Maharashtra Police Act is not followed. So it is apparent that the applicant has not disputed that the impugned

transfer order was passed in view of provisions of Section 22(N) of Maharashtra Police Act. This applicant has not filed any affidavit in rejoinder/counter affidavit. It is true that the applicant has not completed his tenure as appears from his earlier transfer order dated 04.07.2023 in the office of PCR, Aurangabad. According to him as per guidelines of ECI dated 31.07.2024 (page No. 30) only the police officers who have completed three years shall be transferred. He has also invited my attention to Government Circular dated 16.02.2009 to show that the PCR Unit is not connected with the election duty. He submits that as per clause No.5.3 of ECI guidelines (page No. 31), the applicant was not required to be transferred.

There is specific reference in the impugned transfer order dated 30.10.2024 (page No. 15) that as per direction of ECI dated 31.07.2024 and 19.10.2024, the P.Is. within the area of Mumbai Commissionerate were transferred. These vacancies were to be filled in. So the impugned order of transfer of applicant and others were passed by PEB-2 under exceptional circumstances considering administrative exigencies and in public interest. The respondent No.2 has specifically contended in paragraph No. 13 of affidavit in reply that the PEB-2 is the Competent Authority to effect mid-term transfer of P.Is. and the impugned transfer order has been passed by the PEB-2 due to administrative exigencies, in

public interest and under exceptional circumstances by using power under Section 22N(2) of Maharashtra Police Act, 1951. This aspect is not disputed by the applicant by filing affidavit in rejoinder. It is proper to reproduce relevant Section 22N(2) of Maharashtra Police Act, 1951, which is as under:-

“22(N)
 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.

So on perusal of provision of Section 22(N) along with explanation it can be said that the PEB-2 can transfer P.I. in addition to other grounds mentioned in Sub Section (1) in exceptional cases, in public interest and on account of administrative exigencies.

10. The respondents have contended that they have transferred 111 P.Is. from Mumbai Commissionerate as per the direction of ECI dated 31.07.2024 and with approval of C.E.O., M.S. dated 04.10.2024. It is also contended that while giving approval the C.E.O., M.S. has also directed to fill up the vacant posts in Mumbai due to these transfers. Secondly, the E.C.I. vide letter dated 19.10.2024 was directed that while counting the period of 3 years in a commissionerate, an entire tenure of the concerned officers spent in all revenue districts in the

commissionerate should be taken into consideration so as to transfer them. Accordingly, information was collected and placed before the PEB-2. After obtaining approval from C.E.O., M.S., 161 more P.Is. in addition to earlier 111 P.Is. posted outside the Police Commissionerate vide order dated 30.10.2024. This respondent has also placed on record the copy of letter dated 04.10.2024. It is forwarded on behalf of C.E.O., M.S. to Special Inspector General of Police (Administration), Director General of Police, Maharashtra State, Mumbai wherein it is specifically mentioned that since the P.Is. Mumbai are transferred, the posts would be vacant and the steps be taken to fill up these posts. Another letter of Government is dated 29.10.2024. By this letter the Government has directed this respondent that since 111 P.Is. were transferred outside Mumbai the posts are vacant and these are to be filled in so as to have fair Assembly Elections.

So learned Presenting Officer submits that in order to hold elections fairly the posts in Mumbai Commisionerate were need to be filled in and so under such exceptional circumstances and in public interest, the impugned order was passed. It is clear from the letter on behalf of C.E.O., M.S. dated 04.10.2024 (page No. 145) that approval was given for transfer of 111 P.Is. from Mumbai area with direction to fill up these vacant posts and on that condition the approval was given. So there is no reason to

disbelieve the contention of the respondents that there was administrative exigency and there was exceptional circumstance so as to transfer this applicant which was in public interest.

11. Learned counsel for the applicant has submitted that as per the guidelines of ECI, the transfers were made only to ensure fair elections. So their direction can only be said to be operative till the election is over. According to him, in otherwise the impugned transfer order is nothing but deemed deputation/temporary transfer till the election period is over. So this applicant has also to be reposted to his original post. For that purpose he has relied on the judgment passed by the Principal Seat of this Tribunal at Mumbai in **O.A.No. 124 of 2024 with other connected O.As.** The respondents have contended that during Lok Sabha Election, some officers objected their transfers by filing Original Applications before the Principal Seat of this Tribunal at Mumbai in which the Tribunal has passed common order dated 19.07.2024 and allowed the O.As. The respondent No.2 has challenged the said common order in one of the Original Application bearing No. 269/2024. The said order dated 19.07.2024 on which the applicant is relied is challenged by the respondent No.2 by filing Writ Petition No. 11740/2024 before the Hon'ble High Court. Now it appears that the Hon'ble High Court has quashed and set aside the said common order dated

19.07.2024. It is held by the Hon'ble High Court in this matter in paragraph No.10 as under:-

“10. Perusal of the minutes of the PEB dated 25/02/2024 indicates that reference has been made to the Circular dated 21/12/2023 issued by the ECI as well as the communication dated 22/02/2024 issued by the State Election Commission. On that basis requisite information from the concerned superior police authorities was called. After considering the Circular dated 21/12/2023 and communication dated 22/02/2024 referred to above, the power conferred by Section 22-N(2) of the Act of 1951 was invoked and seventy three officers came to be transferred. Since the transfers in question have been effected only in view of the directives of the ECI, it cannot be said that there is absence of any public interest or absence of any exceptional case in transferring the concerned officers. The Circular dated 21/12/2023 issued by the ECI being binding on the State Government, it cannot be said that the PEB by transferring the concerned officers after taking recourse to the said Circular was not entitled to do so. Once it is found that the directives of the ECI were binding on the State Government, steps taken to comply with the same in public interest would be sufficient to invoke the power conferred by Section 22-N(2) of the Act of 1951 and effect transfers accordingly. On that count we do not find that any fault can be found with the orders of transfer.”

For these reasons it cannot be said that there is substance in such submissions of learned counsel for the applicant.

12. Learned counsel for the applicant has also submitted that some of the Police Officers who were transferred earlier by order dated 04.10.2024 and 30.10.2024 during Assembly Elections were reverted back on the same post. It shows that they were transferred temporarily. The copy of transfer order dated 11.12.2024 shows that some of the officers were transferred again

to Mumbai in view of provisions of Section 22N(2) and also on the basis of request of concerned. Even if this submission is accepted, it may be for the applicant to take steps since he has prayed for setting aside for this transfer order on the contention that the impugned order was against the guidelines of ECI and contrary the provisions of Section 22N. It is already discussed in foregoing paragraphs that the transfer of the applicant was in exceptional circumstances, in public interest and on account of administrative exigencies.

13. Learned counsel for the applicant has also contended in written arguments that out of 215 P.Is. who were transferred, two officers filed **Original Application Nos. 1333/2024 and 1334/2024.** Those transfer orders were revoked by Home Department. The copy of order of this Tribunal in O.A.No. 1333/2024 appeared to be interim order. The applicant also tried to rely on the judgment of this Tribunal in a case of **Hareshwar S/o Raghunath Ghuge Vs. The D.G.P., Mumbai (O.A.No. 240/2024)** dated 21.03.2024. According to him the applicant in it was attached to Traffic Branch and was not connected with election duty. It appears that this transfer order was of 26.01.2024. It does not reveal that there was contention of State about the transfer in view of Section 22N of Maharashtra Police Act. Similarly the applicant is relied in a case of another P.I. **Dr.**

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(O.A.No. 367/2024) dated 06.05.2024. In that matter the impugned transfer order dated 21.12.2023 was passed on the basis of directives of ECI. It does not reveal that there was stand of respondents as to transfer as per provisions of Section 22N of Maharashtra Police Act. So the fact in this case also appears to be different. The applicant has also tried to rely in a case of **R.K. Mittal Vs. State of U.P. and Anr.** reported in **2004 (3) AWC Page No. 1917.** Which is on the point of prior approval of ECI. It is already discussed by referring communication dated 04.10.2024 on behalf of Chief Election Officer, Maharashtra State (C.E.O., M.S.) (page No.145) that the approval was given for transfer of 111 P.Is. outside Mumbai with condition to fill up vacancies. It is already discussed that in foregoing paragraphs that the respondent No.2 has contended in affidavit in reply that in order to fill up such vacancies, the PEB-2 has transferred this applicant in public interest and considering administrative exigencies.

14. Learned counsel for the applicant has also tried to submit that there is arbitrariness on the part of respondents while transferring the applicant. It appears that by impugned transfer order in all 70 P.Is. were transferred in Mumbai. So it will be difficult to accept that there was malafide and arbitrariness on the part of the respondents.

15. For these reasons, I am of the opinion that there is no need to interfere in the impugned transfer order and the Original Application deserves to be dismissed. Hence, the following order:-

ORDER

- (A) The Original Application is hereby dismissed.
- (B) In the circumstances, there shall be no order as to costs.

MEMBER (J)

Place:-Aurangabad

Date : 24.03.2025

SAS- O.A. 1354/2024 Transfer ANK.