

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO.1025/2024 (S.B.)

Anil Shivram Raut,)
 Aged about 44 years, Occupation: Service)
 (Police Inspector),)
 R/o Type-IV Building, Flat No. 6,)
 Near B.D.D.S. Office, Police Head Quarter,))
 Nagpur City, Nagpur.)

... **APPLICANT**

// V E R S U S //

1] **The State of Maharashtra,**)
 Through it's Additional Chief Secretary,))
 Home Department,)
 Mantralaya Mumbai -32.)

2] **The Superintendent of Police,**)
 Nagpur Rural, Nagpur.)

3] **Shri. Dhanaji Vitthal Jalak,**)
 Aged about Adult, Occu. Service,)
 R/o O/o Eco Offence Branch,)
 Nagpur Rural, Nagpur.)

... **RESPONDENTS**

Shri S.N. Gaikwad, Learned Counsel for the Applicant.

Shri S.A. Deo, ld. C.P.O. for the Respondent Nos.1 & 2.

None for Respondent No.3.

Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.

J U D G M E N T

Judgment is reserved on 19/03/2025.

Judgment is pronounced on 28/03/2025.

Heard Shri S.N. Gaikwad, learned counsel for the Applicant and Shri S.A. Deo, learned C.P.O. for the Respondent No.1 and 2. None present for Respondent No.3.

1. The case of the applicant in short is as under:-

Applicant was initially appointed on the post of Police Sub-Inspector in the year 2009. After completion of training, he was posted at Nagpur (Rural) as Police Sub-Inspector. Considering his seniority and performance of duty, the respondents have promoted the applicant in the year 2013 to the post of Assistant Police Inspector and posted applicant at Amravati City. Thereafter, applicant was again promoted to the post of Police Inspector in the year 2022 and he was posted at B.D.D.S Office, Nagpur City. By virtue of order dated 18/07/2024, applicant came to be transferred from Bomb

Detection and Disposal Squad (B.D.D.S.), Nagpur to Nagpur (Rural). Thereafter, applicant was joined at Nagpur (Rural) and was attached to Police Control Room, Nagpur (Rural), Nagpur.

2. The Respondent No. 2 has issued order dated 12/08/2024, whereby applicant is posted at Police Station, Umred as an In-charge Officer. Applicant has joined at Police Station, Umred and taken the charge as an In-charge Officer.

3. Surprisingly, respondent No. 2 without following the provisions of Section 22 (N) of the Maharashtra Police Act has issued an impugned order of Transfer dated 09/10/2024, thereby applicant came to be transferred from the Police Station, Umred to Protection Branch. On bare perusal of impugned order, it appears that the respondent No. 2 not at all followed the provisions of Section 22 (N) of the Maharashtra Police Act. Considering the earlier date of transfer, applicant has not completed his normal tenure and he is not due for transfer. Therefore, the impugned transfer order is clearly in breach of the provisions of Section 22 (N) of the Maharashtra Police Act. Therefore, the impugned transfer order is liable to be quashed and set aside.

4. The respondent No. 2 does not follow the provisions of Section 22 (N) for reasons that while issuing impugned transfer order, the respondent No. 2 did not see that whether the applicant has completed normal tenure, all three officer in the impugned transfer order have not completed their normal tenure before the issuance of impugned transfer order. It is submitted that the impugned transfer order does not reflect any exceptional/special reason for issuing transfer order. No any specific reason is mentioned in the impugned order, whether the transfer order is made on complaint or the applicant has not performed his duty properly, nothing is mentioned in the impugned order. Therefore, the impugned transfer order is clearly violative of the provisions of the Transfer Act. At last prayed to quash and set aside the impugned transfer order dated 09/10/2024.

5. Respondent No.2 has filed their reply. It is submitted by the respondent No.2 that the Transfer order dated 09/10/2024 was issued as per the provisions of Section 22 (N) of Maharashtra Police Act. It is submitted that the S.D.P.O. submitted detailed dereliction of duty of applicant. Applicant being In-charge of Umred Police Station behaved in very irresponsible and negligent

manner and failed to attend serious accident spot near Shri Krushna Mandir, occurred due to bursting of firecracker on 19/09/2024, in which total 07 women's sustained grievous fire injuries and were hospitalized. Applicant was duty bound to either personally visit the spot and enquire with the injured persons and to do the needful for their safety and to do the needful from his subordinates. But applicant neither personally visited the spot of incidence, nor sent any of his subordinate officer to attend and do the needful. Applicant was also duty bound either personally or through his Subordinate Officer to urgently register the offence against the culprits, but he did not take timely action.

6. The applicant neither personally visited the spot of incidence, nor sent any of his subordinate officer to enquire and to take care of injured persons. Applicant had given false information regarding the injuries sustained by the victims of the incident. It was further revealed that when the relatives of injured persons came forward to lodge complaint, applicant made them to compromise the matter, instead of registering offence, he has given false information to the Respondent No.2 that parties are entering into compromise. Applicant under lame pretext of non-

receipt of injury reports and treatment papers did not registered the offence. Thus, it was found that there is total dereliction of duty on the part of applicant and hence decision of his transfer from one unit to other within same establishment was taken in the public interest. The said reason is also mentioned in the proceedings of Police Establishment Board.

7. It is submitted that Respondent No.2 has received one more Default Report dated 09/10/2024 against the applicant from the S.D.P.O., Umred Division, Nagpur regarding his default to take appropriate action under Sections 100, 106 and 118 against the cattle owners, who by letting loose their cattle's or animals, causing disturbance in any public street or public place or through neglect or otherwise fails to keep in confinement or under restraint, their cattle's or animals. Taking into consideration, the menace of road accidents due to loose cattle's on public streets, the Respondent No.2 in anticipation on 15/09/2024 posted one message on WhatsApp group of Police Station In-charge, particularly addressing to Devlapar, Ramtek, Kanhan, Kondhali, Umred, Mauda and Buttibori Police Stations to take action against the cattle owners.

8. Applicant did not follow the directions given by the Superior. On 06/10/2024, 09 such animals died in road accident, 01 kilometer away from Mouza Besur, within the local jurisdiction of Umred Police Station, hit by Truck No. MH 40/CD/5842. The truck driver in above said case was Muslim and the cattle owners were belonging to Hindu religion. During their hot exchange of words and scuffle, there was extreme possibility of causing disturbance to law and order situation, but present applicant did not pay attention to the instructions of Superior Officer. Thus, on the basis of second default report, it is noted that present applicant every time needs frequent instructions to do his routine mandatory duties. In answer to letter of the S.D.P.O, Umred division, the applicant could not submit satisfactory explanation.

9. Conduct of Applicant, specially irresponsible and negligent manner, came to be discussed in the meeting of Police Establishment Board and subjective satisfaction arrived at by the Board, for taking decision, to shift Applicant to Protection Branch, on account of his default report. Applicant is guilty of dereliction of duty. Therefore, he is transferred as per the

provisions of Section 22-N (e) and as per Section 22-N (2) of the Maharashtra Police Act. At last, it is submitted that the impugned transfer order is perfectly legal and correct. Hence, the O.A. is liable to be dismissed.

10. During the course of submission, learned counsel for applicant Shri S.N. Gaikwad has submitted that applicant had not completed his normal tenure. The respondents could not have transferred him before completion of his normal tenure at Police Station, Umred. He is transferred to accommodate other person. Therefore, the transfer order is malafide. In support of his submission, he has pointed out the Judgment of the Hon'ble Bombay High Court in W.P. No.3426/1983 in the case of ***Sheshrao Nagoram Umap Vs State of Maharashtra & Ors. 1984 Mh.L.J. 627***, decided on 11/07/1984. The Hon'ble Bombay High Court in the case of ***Sheshrao Umap (cited supra)*** has held as under:-

“A transfer is mala fide when it is made not for professed purpose, such as in normal course or in public or administrative interest or in the exigencies of service but for other purpose, that is to accommodate another person for undisclosed reasons. It is the basic principle of rule of law and good administration, that even the administrative actions should be just and fair.

The policy of transfer should be reasonable and fair and should apply to everybody equally. A mid-term transfer effected only to accommodate another employee will be wholly mala fide and consequently liable to be quashed.”

11. From the above cited decision, it is clear that the transfer order can be made in public or administrative interest or in the exigencies of services, but not for other purpose i.e. to accommodate another person for undisclosed reasons. The applicant was not discharging his duty properly, therefore, in the interest of public he is transferred from Umred to Nagpur. Nothing is pointed out to show that the transfer of the applicant is to accommodate to any other person. Hence, cited decision is not applicable.

12. Learned counsel for the applicant has pointed out the decision of Hon'ble Patna High Court in Civil Writ Jurisdiction Case No.21860/2013 the case of *Sheikh Kalam VS The Union of India & Ors. 2015(4) SLR 78 (Patna)*, decided on 25/04/2014. He has further pointed out the Judgment of Hon'ble Bombay High Court in W.P. No.254/1987 in the case of *Shamrao Chandrappa Kamble VS Deputy Engineer (B & C), Panchayat Samiti Miraj, Sangli & Ors.*, decided on 13/10/1997.

13. In both the cited Judgments, it was held that if there is any mis-conduct committed by the employee, then the inquiry is to be made without taking recourse of transfer. If the transfer order is issued then, it is a punitive transfer order.

14. Applicant was found dereliction in duty. Therefore, applicant is transferred in the public interest. It is permissible as per Section 22-N(e) and Sub Section 22(2) of the Maharashtra Police Act.

15. Learned C.P.O. has pointed out the Judgment of this Tribunal in O.A. No.902/2021 in *Sachin Kisanrao Lule VS The State of Maharashtra & Ors.*, decided on 17/01/2022 and the Judgment in O.A. No.307/2022 in *Shri Shyam S/o Shriram Sontakke VS The State of Maharashtra & Ors.*, decided on 30/08/2022. In both the cited decisions, Section 22(N) was taken into consideration while dismissing the O.A. Section 22(N) is reproduced below:-

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 superannuation :-

- (a) X XX
- (b) X XX
- (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 a 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) X XX
- (e) X XX

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

<u>Police Personnel</u>	<u>Competent Authority</u>
(a) X XX	XXX
(b) X XX	XXX
(c) <i>Officers up to Police Inspector. Commissionerate</i>	(c) <i>Police Establishment Board at Level.</i>

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 if this sub-section, the expression “Competent Authority” shall mean :-*

<u>Police Personnel</u>	<u>Competent Authority</u>
(a) X XX	XXX
(b) X XX	XXX
(c) X XX	XXX
(d) X XX	XXX
(e) Police Personnel up to the rank of Police	Police Estt. Board of at District level.

*Inspector for transfer
within the district.*

The same issue was decided by the Hon'ble Bombay High Court in W.P. No.6809/2017 in the case of ***Vazeer Hussain Shaikh VS State of Maharashtra & Ors.***, decided on 15/11/2017.

16. Materials placed on record by the side of respondents clearly show that applicant was not discharging his duty properly. Applicant had not visited the spot of incident, where 07 women were injured. He had not registered any offence against the real culprits. Moreover, he had given false information to the Superior Officer. He was compelling the complainant to compromise the matter. The S.D.P.O., Umred made detailed report on 04/10/2024 and 09/10/2024. The matter was kept before the Police Establishment Board. The Police Establishment Board has considered the detailed report made by the S.D.P.O., Umred and found that the transfer of applicant in the public interest is necessary. Therefore, the respondent No.2 on the recommendation of Police Establishment Board transferred the applicant from Umred to Nagpur. It is permitted as per the provisions of Section 22(N) of the Maharashtra Police Act. As per Section 22(N)(e), the Police Personnel if found guilty of the dereliction of duty, can

be transferred. As per Section 22(N) 2, in addition to the ground mentioned in Sub-Section (1), in exceptional cases, in public interest and on account of administrative exigencies, the Competitive Authority shall make mid-term transfer of any Police Personnel of the Police Force. This Section itself shows that mid-term transfer can be made by the Authority on the ground mentioned in Section 22(N) Sub-clause (1) & (2). Therefore, initiation of departmental enquiry is not mandatory before the transfer order. The cited decision in which it was held that order is punitive without taking action of departmental enquiry is not applicable in view of Section 22(N) of the Maharashtra Police Act.

17. The person who is transferred in place of the applicant has already taken charge. There is no *mala fide* on the part of respondent No.2 by issuing impugned transfer order. The Transfer order is perfectly legal and correct, in view of Section 22-N (e) and as per Section 22-N (2) of the Maharashtra Police Act. Hence, the following order:-

O R D E R

O.A. is dismissed with no order as to costs.

(Justice M.G. Giratkar)
Vice Chairman.

Dated :- 28/03/2025.

PRM

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Piyush R. Mahajan.

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 28/03/2025