

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.1018 OF 2024**

**DISTRICT : Pune**

**SUB : Transfer**

Shri. Sandeep Pandurang Bhosale, )  
Age 52 years, Working as - Police Inspector )  
Office Police Commissionerate Chhatrapati )  
Sambhaji nagar City, (Presently on medical )  
leave, as under going cancer treatment )  
Residing at- "Malhar" Shreedatt Colony, )  
Opposite Akashwani, Hadapsar, Pune. )....**Applicant**

**Versus**

1. State of Maharashtra )  
Through Additional Chief Secretary Home )  
Department, Mantralaya Mumbai-400 032. )  
  
2. The Director General of Police, )  
Maharashtra State, Mumbai, Maharashtra )  
Police Headquarter Shahid Bhagat Singh Marg, )  
Colaba, Mumbai-400 001. )  
  
3. The Police Commissioner, Police )  
Commissionerate Chhatrapati Sambha Nagar )  
City, Mill Corner, Dr. B.R Ambedkar Marg, )  
Chhatrapati Sambhajnagar, PIN-431001. )...**Respondents.**

Smt. Punam Mahajan, learned Advocate for the Applicant.

Smt. Archana B. K., learned Presenting Officer for the Respondents.

CORAM : Hon'ble Shri M. A. Lovekar, Vice-Chairman

Reserved on : 02.04.2025

Pronounced on : 03.04.2025

**JUDGEMENT**

Heard Smt. Punam Mahajan, learned Advocate for the Applicant and Smt. Archana B. K., learned Presenting Officer for the Respondents.

2. By the impugned order dated 26.02.2024 the Applicant, who holds the post of Police Inspector was transferred from Police Commissionerate, Pune City to Police Commissionerate, Chatrapati Sambhaji Nagar. The impugned order refers to directives issued by the Election Commission of India on 21.12.2023 and transfer of 130 Police Inspectors having been effected pursuant thereto by invoking Section 22 N(2) of the Maharashtra Police Act, 1951. The impugned order further refers to directives issued by the Election Commission of India on 22.02.2024 and transfer of 129 Police Inspectors having been effected pursuant thereto, including that of the Applicant, (whose name features at Sr. No.33) by invoking Section 22 N(2) of the Maharashtra Police Act, 1951.

3. The grounds raised by the Applicant to impugn the order of his transfer are –

(1) The Applicant is taking treatment for Cancer since 2018 in Noble Hospital and Dinanath Mangeshkar Hospital, Pune.

(2) Options given by him for posting so that he could take treatment in Hospitals at Pune were not considered.

(3) He has undergone surgeries in Noble Hospital, Pune and Ruby Hall Clinic, Pune.

(4) He is currently undergoing Chemotherapy.

(5) His representations dated 07.03.2024, 22.03.2024 and 12.04.2024 ought to have been considered favorably.

(6) Similar case of Police Inspector Akshay Sonawane was considered favorably and he was transferred from Thane City to Pune City.

(7) Judgments of this Tribunal as well as the Hon'ble Bombay High Court squarely cover case of the Applicant.

4. Stand of Respondents 2 and 3 is as follows. On 21.12.2023 the Applicant was working at Kondhawa Police Station in Commissionerate of Pune City and he had completed tenure of three years in Pune District during preceding four years. As per clarificatory directives of the Election Commission of India dated 22.02.2024, the Police Inspectors who were posted in Police Stations and who had completed three out of four preceding years in Revenue District on any post in the said Revenue District were liable to be transferred out of the Revenue District. Thus, transfer of the Applicant was effected as per directives of the Election Commission of India which have primacy.

5. Para 3 of the directives of the Election Commission of India dated 21.12.2023 reads as under :-

“3. Hence, the Commission has decided that **no officer connected directly with elections shall be allowed to continue in the present district (revenue district) of posting:-**

(i) if she/he is posted in her/his home district.

(ii) if she/he has completed three years in that district during last four (4) years or would be completing 3 years on or before 30th June, 2024

While calculating the period of three years, promotion to a post within the district is to be counted.”

Para 5.3 of these directives reads as under :-

“5.3 Police Officers: - These instructions shall be applicable to the police department officers such as Range ADGs/IGS, DIGs, Commandants of State Armed Police, SSPs, SPs, Addl. SPs, Sub-Divisional Head of Police, SHOs, Inspectors, Sub-Inspector, RIs / Sergeant Majors or equivalent ranks, who are responsible for security arrangement or deployment of police forces in the district at election time. The police

officials who are posted in functional departments like computerization, special branch, training, etc. are not covered under these instructions. Following shall be followed:

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

(ii) If a Police Sub-Inspector has completed or would be completing a 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 AC. If that is not possible due to small size of district, then he/she should be transferred out of the district.”

Relevant part of the clarificatory directives dated 22.02.2024 reads as under :-

“त्याचप्रमाणे दि. २१.१२.२०२३ रोजी आयोगाचे आदेश निर्गमित झालेले असल्याने त्या तारखेनंतर अशा पदांवर कार्यरत असलेल्या बदलीपात्र अधिका-याची बदली जिल्ह्याबाहेर करणे आवश्यक आहे. अशा अधिका-यांना संबंधित जिल्ह्यांतर्गत कोणत्याही पोलीस शाखेमध्ये/पोलीस स्टेशन मध्ये नियुक्ती देणे अभिप्रेत नाही. तसेच, functional पदावर कार्यरत असलेल्या अधिका-यास भानिआच्या निकषानुसार जिल्ह्याबाहेर बदलीपासून सवलत असलीतरी संबंधित अधिका-यास जिल्ह्यामध्ये निवडणूकीशी संबंधित पदावर बदली केल्यास व सदर अधिकारी आयोगाच्या पत्रातील परि.३ येथील निकषात बसत असल्यास (किमान ०३ वर्षे किंवा स्वजिल्हा) त्याला वरील सवलत लागू होणार नाही.”

6. The aforequoted directives which begin with Para 3 of the directives dated 21.12.2023 are required to be considered together. Opening words of Para 3 read ‘No officer connected directly with elections.....’. Thus, this is a precondition for effecting transfers pursuant to directives of the Election Commission of India. Only

after this precondition is satisfied, it could be examined whether any of the following conditions to effect transfer is satisfied. It is not in dispute that by order dated 15.01.2024 the Applicant was transferred from Kondhawa Police Station, Pune to Cyber Cell. Thus, on the date of passing of the impugned order the Applicant was holding a Non-Executive post. So far as this aspect of the matter is concerned, the Applicant has relied on the judgment of the Auragabad Bench of this Tribunal dated 21.03.2024 in **O.A.No.240/2024 (Hareshwar Raghunath Ghuge v/s DGP, Maharashtra & 3 Ors.)**. In this case after quoting Para 3 of the directives dated 21.12.2023, and facts of the case, it was held :-

“In terms of the said directives, no officer directly connected with elections shall be allowed to continue in district, which is his home district or he has completed three years in that district during last four years. In the instant case, however, it appears that the applicant was holding non-executive post i.e. Traffic Branch Cidco, Ch. Sambhajinagar at the time of passing of impugned transfer order and as such, the basic condition as laid down in para no. 3 is not fulfilled. The applicant is not the officer connected directly with the elections. Thus, the transfer policy as declared by the Election Commission of India by communication dated 21.12.2023 is not applicable to the case of the applicant.”

By order dated 07.08.2024 passed in W.P. No.8316/2024 the order of this Tribunal dated 21.03.2024 in O.A.No.240/2024 was upheld by the Hon'ble Bombay High Court. Facts of '**Hareshwar**' (supra) are identical to the facts of the instant case.

The Respondents, on the other hand, have relied on **Anurag Gupta V/s Election Commission of India** wherein it is held that Article 324 of the Constitution of India provides for establishment

of Election Commission and also vests the powers of superintendence, direction and control of elections in it.

The Respondents have further relied on **Smt. Jyoti Hanumant Patil V/s State of Maharashtra (judgment of the Bombay High Court in W.P. No.9499 of 2016)** wherein it is held –

“The State Government and the State Election Commission are free to contemplate on the issue of transfer of officers keeping in view various aspects for consideration and frame a proper policy for future with sole objective of holding free and fair election (emphasis supplied).”

The Respondents have also relied on **Union of India V/s S. L. Abbas, (1993) USCC 357** wherein it is held –

“The administrative tribunal is not an appellate authority sitting in judgment over the order of transfer and it cannot substitute its own judgment for that of the authority competent to transfer. The order of transfer can be questioned in court or tribunal only where it is passed malafide or it is made in violation of the statutory provisions. ”

The Respondents have further relied on **Dattatray R. Karale Vs. Shekhar Balasaheb Genbhau and Ors., 2024 SCC Online Bom 868** wherein it is held –

“22. Under Article 324 of the Constitution of India, the ECI has been vested with plenary powers of superintendence, direction and control of elections and in order to discharge constitutional obligations and duties, the ECI issues various directives, including the directives in relation to transfer and posting of officers in a State where elections are due. The Circular issued by the ECI, dated 21st December 2023, thus, has to be seen in this

perspective and in a sense that the directives issued by the ECI are mandatorily to be followed by the respective Governments.”

The Respondents have further relied on common judgment of the Hon’ble Bombay High Court dated 07.02.2025 in a batch of W.Ps. In this judgement it is observed –

“The contention raised by the police personnel in the present proceedings that the orders of transfer having been issued in view of the directives of the ECI on account of general elections and at the conclusion of such elections the deemed deputation of such police personnel ought to come to an end cannot be accepted.”

7. In the instant case, on facts, it will have to be held that order of transfer of the Applicant was not in consonance with the directives of the Election Commission of India. Hence, none of the above referred rulings will help the Respondents.

8. For the reasons discussed hereinabove, the Original Application is allowed in the following terms. The impugned order dated 26.02.2024 is quashed and set aside qua the Applicant. No order as to costs.

**Sd/-**  
**( M. A. Lovekar)**  
**Vice-Chairman**

Place: Mumbai  
Date: 03.04.2025.  
Dictation taken by: V. S. Mane  
*D:\VSM\VSO\2025\Judgment 2025\SB\O.A.1018 of 2024 transfer.doc*