

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI**

**ORIGINAL APPLICATION NO.276 OF 2024**

**DISTRICT : PUNE  
SUBJECT : TRANSFER**

|                                                     |                       |
|-----------------------------------------------------|-----------------------|
| Shri Vivek Gopalrao Patil,                          | )                     |
| Working as Deputy Commissioner of Police (Traffic), | )                     |
| Office of the Police Commissioner,                  | )                     |
| Pimpri-Chinchwad Commissionerate                    | )                     |
| R/at.-A/502, Swan Villas, Baner-Pashan Link Road    | )                     |
| Pashan, Pune.                                       | )... <b>Applicant</b> |

**Versus**

- |    |                                                      |   |
|----|------------------------------------------------------|---|
| 1) | State of Maharashtra,                                | ) |
|    | Through Additional Chief Secretary, Home Dept.       | ) |
|    | 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,                             | ) |
|    | Commissionerate of Pimpri-Chinchwad,                 | ) |
|    | Pune-411 003.                                        | ) |
| 4) | The Additional Chief Secretary and                   | ) |
|    | Chief Electrol Officer ,                             | ) |
|    | General Administration Department,                   | ) |
|    | 5 <sup>th</sup> Floor, Mantralaya, Maharashtra State | ) |
|    | Mumbai-400 032.                                      | ) |
| 5) | Shri Vishal Vijaysinh Gaikwad                        | ) |
|    | Age : 45 years, Occ. : Service                       | ) |
|    | Presently posted at                                  | ) |
|    | Deputy Commissioner Traffic,                         | ) |
|    | Pimpri Chinchwad Police Commissioner                 | ) |

- 6) Smt. Madhuri Rudresh Kangane, )  
 Age : 42 Years, Occu. : Service )  
 Presently posted at )  
 Deputy Commissioner Head Quarter, )  
 Pimpri Chinchwad Police Commissioner, )... **Respondents**

**Smt. Punam Mahajan, learned Advocate for the Applicant.**

**Smt. Kranti S. Gaikwad, learned Chief Presenting Officer for the Respondents.**

**Shri D.B. Thoke, learned Advocate for Respondent No.5 & Respondent No.6.**

**CORAM : DEBASHISH CHAKRABARTY, MEMBER (A)**

**DATE : 09.09.2024.**

### **JUDGMENT**

1. The Applicant who belongs to cadre of 'S.P. / D.C.P. (Non Cadre)' has invoked provisions of 'Section 19' of 'The Administrative Tribunal Act, 1985' to challenge his transfer from post of 'D.C.P. (Traffic)' in establishment of 'Commissioner of Police, Pimpri-Chinchwad' to post of 'S.P.' in 'Maharashtra Police Academy, Nashik' by 'Home Department Government Order dated 28.02.2024'.

2. The learned Advocate for Applicant stated that Applicant had just been shifted to post of 'D.C.P. (Traffic)' from post of 'D.C.P. Zone-1' by Order dated 13.01.2023 of 'Commissioner of Police, Pimpri-Chinchwad' but soon thereafter was transferred out form post of 'D.C.P. (Traffic)' in establishment of 'Commissioner of Police, Pimpri-Chinchwad' to post of 'S.P.' in 'Maharashtra Police Academy, Nashik by 'Home Department Government Order dated 28.02.2024'.

3. The learned Advocate for Applicant emphasized that material point for consideration is that 'Son' of Applicant suffers from 'Mental Retardation' to an extent of 75 % which is categorized as 'Benchmark Disability'. The

request of Applicant for cancellation of transfer to post of 'S.P.' in 'Maharashtra Police Academy, Nashik' by 'Home Department Government Order dated 28.02.2024' thus was on substantive grounds of being 'Care Giver' under 'Section 2(d)' of 'The Rights of Persons With Disabilities Act, 2016'.

4. The learned Advocate for Applicant thereupon referred to decision taken on 18.03.2024 as per directions given during hearing on 29.02.2024 to review 'Home Department Government Order dated 28.02.2024' by which Applicant had been transferred from post of 'DCP (Traffic)' in establishment of 'Commissioner of Police, Pimpri Chinchwad' to post of 'S.P.' in 'Maharashtra Police Academy; Nasik' to stress that case of Applicant was not reviewed sympathetically by 'P.E.B.-1'.

5. The learned Advocate for Applicant then drew attention to the fact that 'Home Department' does yet not have 'Specific Guidelines' in respect of 'Transfers & Postings' of 'Police Personnel' who have 'Legal Rights' either as 'Disabled Persons' or as 'Care Givers' to 'Disabled Persons' under 'The Right of Persons With Disabilities Act 2016' and referred to contents of 'Ministry of Personnel, Public Grievances and Persons Department of 'Personal and Training'; 'Office Memorandum' No. 36035/44/2023 - Estt (Res- II)' dated 02.02.2024' which are updated guidelines issued by 'Government of India' regarding exemption from routine exercise of transfers of 'Government Servants' of 'Central Government' who are 'Care Givers' to 'Disabled Persons' under 'The Right of Persons With Disability Act 2016'.

6. The learned Advocate for 'Applicant - Interveners' in M.A. No.171/2024 who was later impleaded as 'Respondent No.5' stated that 'Respondent No.5' was transferred to establishment of 'Commissioner of Police, Pimpri Chinchwad' by Home Department Order dated 30.01.2024 and had joined on the post of 'D.C.P. (Headquarter)' as per Order dated 03.02.2024 of 'Commissioner of Police, Pimpri Chinchwad' which was before transfer of Applicant from post of 'D.C.P. (Traffic)' to post of 'S.P' in

‘Maharashtra Police Academy, Nashik’. The ‘Respondent No.5’ was laterally shifted to post of ‘D.C.P. (Traffic)’ and took charge on 29.02.2024.

7. The learned Advocate for ‘Applicant – Intervener’ in M.A. No.172/2024 who was later impleaded as ‘Respondent No.6’ stated that ‘Respondent No.6’ was transferred from post of ‘Additional S.P. (Railways), Pune’ to establishment of ‘Commissioner of Police, Pimpri Chinchwad’ by ‘Home Department Government Order dated 28.02.2024’. The ‘Respondent No.6’ thereafter joined on post of ‘D.C.P. (Headquarters)’ on 29.02.2024.

8. The learned PO relied on the ‘Affidavit-in-Reply’ dated 01.04.2024 filed on behalf of Home Department to justify the transfer of Applicant from post of ‘DCP (Traffic)’ in establishment of ‘Commissioner of Police, Pimpri Chinchwad’ to post of ‘S.P.’ in ‘Maharashtra Police Academy; Nasik’ on grounds that he had served in Pune District from 24.11.2016 to 28.02.2024 and thus it was necessary to transfer the Applicant as per directions in Election Commission of India letter dated 21.12.2023.

9. The learned PO relied on the ‘Affidavit-in-Reply’ dated 01.04.2024 filed on behalf of Home Department to emphasize that Applicant was transferred from post of ‘DCP (Traffic)’ in establishment of ‘Commissioner of Police, Pimpri Chinchwad’ to post of ‘S.P.’ in ‘Maharashtra Police Academy; Nasik’ which happens to be located at ‘Divisional Headquarters’ with availability of ‘State of the Art’ facilities in ‘Educational Institutions’ and ‘Medical Field’.

10. The learned PO also justified the transfer of ‘Respondent No.5’ and ‘Respondent No.6’ to establishment of ‘Commissioner of Police, Pimpri Chinchwad’ and they being assigned to posts of DCP (Traffic) and DCP (Headquarter) subsequent to transfer Applicant from post of ‘DCP (Traffic)’ in establishment of ‘Commissioner of Police, Pimpri Chinchwad’ to post of ‘S.P.’ in ‘Maharashtra Police Academy; Nasik’ by Government Order dated 28.02.2024 of Home Department.

11. The transfer of 'Respondent No.6' however comes under the lens as she had not joined on 'Vacant Post' of 'Additional SP (Railways), Pune'. However, with alacrity 'Home Department Government Order dated 28.02.2024' was issued to transfer 'Respondent No.6' to establishment of 'Commissioner of Police, Pimpri Chinchwad'. The 'Respondent No.6' thereupon was forthwith enabled to join in place of 'Respondent No.5' as 'D.C.P. (Headquarters)' by laterally shifting him to post of 'D.G.P. (Traffic)' in sequel of brisk changes effected by 'Commissioners of Police, Pimpri Chinchwad' immediately after transfer of Applicant to post of 'S.P.' in 'Maharashtra Police Academy, Nashik' by 'Home Department Government Order dated 28.02.2024 thus making it imperative to 'Lift the Veil'.

12. The impromptu 'Modification / Change' made by 'Home Department Government Order dated 28.02.2024' without any recommendation of 'PEB-1' to nullify earlier transfer of 'Respondent No.6' to post of 'Additional SP (Railway), Pune' which she had not joined and enable her to quickly join on post of 'D.C.P. (Headquarter)' which was got vacated concurrently by lateral shifting 'Respondent No.6' to post 'D.G.P. (Traffic)' curiously coincided with transfer of Applicant on 28.02.2024 from post of 'D.C.P. (Traffic)' in establishment of 'Commissioner of Police, Pimpri-Chinchwad' to post of 'S.P.' in 'Maharashtra Police Academy, Nashik' and even more surprisingly got implemented on 29.02.2024 the date on which this O.A. No.276/2024 was heard at length for grant of 'Interim Relief' to Applicant.

13. The transfer of Applicant from post of 'D.C.P. (Traffic)' in establishment of 'Commissioner of Police, Pimpri-Chinchwad' to post of 'S.P.' in 'Maharashtra Police Academy, Nashik' by 'Home Department Government Order dated 28.02.2024' peculiarly appears to be also linked to transfer of an officer mentioned at 'Sr. No. 5' of 'Home Department Government Order dated 28.02.2024' to post of 'D.C.P. Thane' from post of 'S.P.' in 'Maharashtra Police Academy, Nashik'. The officer at Sr. No.5 came to be transferred as 'D.C.P. Thane' even though 'File Notings' of Home Department dated 26.02.2024 indicate that 'Principal Secretary and Chief Electoral

Officer, Maharashtra State' had specifically observed that the officer mentioned at 'Sr. No. 5' of 'Home Department Government Order dated 28.02.2024' who was serving on post of 'SP' in 'Maharashtra State Police Academy' was not eligible to be transferred out of 'Nashik District'.

14. The transfer of the officer mentioned at 'Sr. No.5' of 'Home Department Government Order dated 28.02.2024' who was serving on post of 'SP' in 'Maharashtra Police Academy Nashik' therefore is not just mere coincidence when all these transfers of officers from cadre of 'SP/DCP (Non Cadre)' are viewed together as fast moves done in chess board style to provide justification for transfer of Applicant from post of 'Deputy Commissioner (Traffic), in establishment of 'Commissioner of Police, Pimpri Chinchwad' to post of 'S.P.' in 'Maharashtra Police Academy, Nashik' by 'Home Department Government Order dated 28.02.2024'.

15. The 'Minutes of Meeting' of 'P.E.B.-1' held on 26.02.2024 read with 'File Notings' establish that two officers belonging to cadre of 'SP/DCP (Non Cadre)' had been transferred within rather short period from posts of 'S.P.' in 'Maharashtra Police Academy, Nasik'; with one of them to post of 'D.C.P.' in establishment of 'Commissioner of Police, Thane' who is officer mentioned at 'Sr. No.5' of 'Home Department Government Order dated 28.02.2024'; while other is 'Respondent No.5' now serving on post of 'D.C.P. (Traffic)' in establishment of 'Commissioner of Police, Pimpri Chinchwad' who was transferred out earlier from post of 'SP' in 'Maharashtra Police Academy, Nashik' by 'Home Department Government Order dated 30.01.2024'.

16. The transfer of 'Respondent No.5' from post of 'S.P.' in 'Maharashtra Police Academy, Nashik' and his joining on post of 'D.C.P. (Headquarters)' in establishment of 'Commissioner of Police, Pimpri Chinchwad' which was vacant as on 30.01.2024 was certainly prior to transfer of Applicant from post of 'D.G.P (Traffic)' in establishment of 'Commissioner of Police, Pimpri Chichwad' to post of 'S.P.' in 'Maharashtra Police Academy, Nashik'. Therefore, no direct connect is established between transfer of 'Respondent

No.5' and that of Applicant subsequently by 'Home Department Government Order dated 28.02.2024'. Nonetheless it must be observed that 'Respondent No.5' who had served on post of 'DCP (Headquarter)' for just about 'One Month' was laterally shifted suddenly by 'Commissioner of Police, Pimpri Chinchwad' to post of 'D.C.P. (Traffic)' to enable 'Respondent No.6' to quickly join on post of 'D.C.P. (Headquarter)' immediately after 'Home Department Government Order dated 28.02.2024' of Home Department came to be issued, so that both could immediately take up their new charges on 29.02.2024 when this O.A. No.276/2024 was heard at length for grant of 'Interim Relief' to Applicant.

17. The transfer of 'Respondent No.6' and her joining on post of 'DCP (Headquarters)' in establishment of 'Commissioner of Police, Pimpri Chinchwad' leaves much to be explained as it was done without any recommendation of 'P.E.B.-1' and then hurriedly effected by Government Order dated 28.02.2024 of Home Department. The role of 'P.E.B.-1' can be obliterated only by last 'Proviso' of 'Section 22N (2)' of 'Maharashtra Police Act', 1951' when the 'Highest Competent Authority' chooses to exercise this expansive 'Statutory Power' but it is also required to be invoked only in rare instances which specifically relate to (a) 'Serious Complaints' (b) 'Irregularities' (c) 'Law & Order Problem'. However, no such exceptional eventualities had arisen in respect to 'Respondent No.6' as she had not even joined on post of 'Additional SP (Railways), Pune' as per earlier 'Home Department Government Order dated 20.11.2023'. Hence it must be concluded that transfer of 'Respondent No.6' was only due to anomalous consideration given to her by 'Home Department'. The act of 'Respondent No.6' of not joining on post of 'Additional SP (Railways), Pune' was perfunctorily condoned and 'Respondent No.6' came to be posted in establishment of 'Commissioner of Police, Pimpri Chinchwad'.

18. The reasons put forth to somehow justify joining of 'Respondent No.6' on post of 'D.C.P. (Headquarter)' in establishment of 'Commissioner of Police, Pimpri Chinchwad' on 29.02.2024 are not at all convincing as

‘Respondent No.6’ had intently not joined on post of ‘Additional S.P. (Railways) Pune’. The ‘Respondent No.6’ it appears had waited opportunistically to seek change of transfer from post of ‘Additional S.P. (Railways), Pune’ which strangely even happened without recommendation of ‘P.E.B.-1’ to be effected by Government Order dated 28.02.2024 of Home Department.

19. The transfer of ‘Respondent No.6’ to establishment of ‘Commissioner of Police, Pimpri Chinchwad’ by ‘Government Order dated 28.02.2024’ of ‘Home Department’ was sought to be justified by learned P.O. by valiantly making statement that no recommendation of ‘P.E.B.-1’ was required to be taken again as it was just ‘Modification / Change’ in earlier ‘Home Department Government Order dated 20.11.2023’. However, if such an exception as claimed by P.O. were to be allowed then it should have been included in some ‘Policy Guidelines’ by Home Department; as otherwise such an exception *‘ipso-facto’* would seriously undermine the functions & powers vested with ‘P.E.B.-1’ under ‘Section 22D’ of ‘The Maharashtra Police Act, 1951’. Nothing prevented the Home Department from following precedence in respect of ‘Respondent No.6’ given the admitted fact that ‘P.E.B.-1’ infact had held meeting just few days prior on 26.02.2024 to recommend large scale transfers of other officers from cadre of ‘S.P. / D.C.P. (Non Cadre)’ including that of Applicant.

20. The ‘Home Department’ was expected to respond to detailed observations made from time to time during hearing of this O.A. No.276/2024 to review its earlier decisions taken in respect of Applicant upon deeper appreciation of all facets with an ‘Open Mind’ against the backdrop of provisions of ‘Section 2(d)’ of ‘The Right of Person With Disability Act, 2016’ which provides ‘Legal Rights’ to Applicant as ‘Care Giver’ of his ‘Son’ who is ‘Mentally Retarded’ to an extent of 75%. However, it does appear that ‘P.E.B.-1’ has chosen to lean completely on directions in (a) Election Commission of India letter dated 21.12.2023 (b) Election Commission of India letter dated 19.01.2024 and (c) Election Commission of



India letter dated 24.01.2024, rather than observe in letter & spirit the provisions of law under 'Section 2(d)' of 'The Right of Persons With Disability Act, 2016'.

21. The Home Department was made aware about progressive decisions taken by Government of India initially under 'The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995' and then even more affirmatively after enactment of 'The Rights of Persons With Disabilities Act, 2016' which indeed has brought about transformative changes in perception regarding transfers of such 'Government Servants' of 'Central Government'. The extracts of all these 'Office Memoranda' issued from time to time by 'Ministry of Personnel, Public Grievances and Personnel Department' of 'Personal and Training' are necessary to reproduce below for enhanced contextual clarity and appreciation of cases of such 'Government Servants' including 'Police Personnel' who are serving under 'State Government':-

**A) Office Memorandum dated 6<sup>th</sup> June, 2014**

**"Subject: Posting of Government employees who have differently abled dependents - reg.**

There has been demand that a Government employee who is a care giver of the disabled child may not have to suffer due to displacement by means of routine transfer/rotational transfers. This demand has been made on the ground that a Government employee raises a kind of support system for his/her disabled child over a period of time in the locality where he/she resides which helps them in the rehabilitation.

2. The matter has been examined. Rehabilitation is a process aimed at enabling persons with disabilities to reach and maintain their optimal physical, sensory, intellectual and psychiatric or a social functional level. The support system comprises of preferred linguistic zone, school/academic level, administration, neighbours, tutors/special educators, friends, medical care including hospitals, therapists and doctors etc. Thus, rehabilitation is a continuous process and creation of such support system takes years together.

3. Considering that the Government employee who has disabled child serve as the main care giver of such child, any displacement of such Government employee will have a bearing on the systematic rehabilitation of the disabled child since the new environment/set up could prove to be a hindrance for the rehabilitation process of the child. Therefore, a Government servant who is also a care giver of disabled child may be exempted from the routine exercise of transfer/rotational transfer subject to the administrative constraints. The word 'disabled' includes (i) blindness or low vision; (ii) hearing impairment; (iii) locomotor disability or Cerebral Palsy; (iv) Leprosy cured; (v) mental retardation; (vi) mental illness and (vii) multiple disabilities.

4. Upbringing and rehabilitation of disabled child requires financial support. Making the Government employee to choose voluntary retirement on the pretext of routine transfer/rotation transfer would have adverse impact on the rehabilitation process of the disabled child."

**B) Office Memorandum dated 8<sup>th</sup> October, 2018**

**Subject: Exemption from the routine exercise of transfer/rotational transfer.**

Considering that transfer of a Government employee who serves as the main care giver of persons with disability would have a bearing on the systematic rehabilitation of persons with disabilities, the Government issued OM of even number dated June 6, 2014 to exempt such employee from routine exercise of transfer/rotational transfer, subject to administrative constraints.

2. The scope of disability initially had covered (i) blindness or low vision (ii) hearing impairment (iii) locomotor disability or cerebral Palsy (iv) leprosy cured (v) mental retardation (vi) mental illness and (vii) multiple disabilities, which subsequently, vide OM of even number dated November 17, 2014 and January 5, 2016, was further extended to include 'Autism', 'Thalassemia' and 'Haemophilia'.

3. With the enactment of the Rights of Persons with Disabilities Act, 2016 on April 17, 2017, the following instructions are issued in supersession of the above-mentioned OM of even number dated June 6, 2014, November 17, 2014 and January 5, 2016 with regard to the eligibility for seeking exemption from routine exercise of transfer/rotational transfer:

(i) A Government employee who is a care-giver of dependent daughter/son/parents/spouse/brother/sister with Specified Disability, as certified by the certifying authority as a Person with Benchmark Disability as defined under Section 2(r) of the Rights of Persons with Disabilities Act, 2016 may be exempted from the routine exercise of transfer/rotational transfer subject to the administrative constraints.

(ii) The term "Specified Disability" as defined in the Schedule to the Rights of Persons with Disabilities Act, 2016, covers (I) Locomotor disability including leprosy cured person, cerebral palsy, dwarfism, muscular dystrophy and Acid attack victims (ii) Blindness (iii) Low-vision (iv) Deaf (v) Hard of hearing (vi) Speech and language disabilities (vii) Intellectual disability including specific learning disabilities and autism spectrum disorder (viii) Mental illness (ix) Disability caused due to: (a) Neurological conditions such as Multiple sclerosis and Parkinson's disease (b) Blood disorder- Haemophilia, Thalassemia and Sickle cell-disease and (x) Multiple disabilities (more than one of the above specified disabilities) including deaf blindness and any other category of disabilities as may be notified by the Central Government.

(iii) The term 'Specified Disability' as defined herein is applicable as grounds only for the purpose of seeking exemption from routine transfer rotational transfer by a Government employee, who is a care-giver of dependent daughter/son/parents/spouse/brother/sister as stated in Para 3(i) above.

**C) Office Memorandum dated 2<sup>nd</sup> February 2024,**

**Subject: Guidelines for providing certain facilities in respect of persons with disabilities who are already employed in Government for efficient performance of their duties.**

**I. Exemption from routine exercise of transfer/rotational transfer in respect of Government employee, who is a caregiver of Person with Disability dependents:**

(i) A Government employee who is a care-giver of dependent daughter/son/parents/spouse/brother/sister with Specified Disability, as certified by the certifying authority, as a Person with Benchmark Disability, as defined under 'Section 2(r)' of The Rights of Persons with Disabilities Act, 2016 may be exempted from the routine exercise of transfer/rotational transfer subject to the administrative constraints.

(ii) The term 'Specified Disability' as defined in the Schedule to the Rights of Persons with Disabilities Act, 2016, covers (i) Locomotor disability including leprosy cured person, cerebral palsy, dwarfism, muscular dystrophy and Acid attack victims (ii) Blindness (iii) Lowvision (iv) Deaf (v) Hard of hearing (vi) Speech and language disabilities (vii) Intellectual disability including specific learning disabilities and autism spectrum disorder (viii) Mental illness (ix) Disability caused due to: (a) Neurological conditions such as Multiple sclerosis and Parkinson's disease (h) Blood disorder- Haemophilia, Thalassemia and Sickle cell-disease and (x) Multiple disabilities (more than one of the above specified disabilities) including deaf blindness and any other category of disabilities as may be notified by the Central Government.

(iii) The term 'Specified Disability' as defined herein is applicable as grounds only for the purpose of seeking exemption from routine transfer/ rotational transfer by a Government employee, who is a caregiver of dependent daughter/son/parents/spouse/brother/sister as stated in Para I (i) above.

22. The 'Legal Rights' of 'Care Giver' bestowed on 'Applicant' under 'Section 2(d)' of 'The Right of Persons With Disability Act, 2016' which is special 'Central Legislation' does not get curtailed in any way just because Applicant happens to be 'Police Personnel'. The enforceability of 'Legal Rights' of Applicant as 'Care Giver' to his 'Son' who is Mentally Retarded to extent of 75% and included in category of 'Benchmark Disability' cannot be overlooked even though 'Home Department' in respect of 'Police Personnel' as defined under 'Section 2(11A)' of 'Maharashtra Police Act, 1951' has thus far not taken any definitive initiative to formulate 'Policy Guidelines' on lines of 'Office Memorandum' dated 02.02.2024 by 'Ministry of Personnel, Public Grievances and Pensions Department of Personnel and Training'. Be that as it may; the 'Legal Rights' of both Applicant and his 'Son' deserve full protection by Home Department through sincere implementation in both letter and spirit of applicable provision under 'The Rights of Persons with Disabilities Act, 2016'.

23. The 'Home Department' based on recommendations of 'P.E.B.-1' in its last meeting held on 10.07.2024 took decision to reiterate its earlier stand taken in meeting of 'P.E.B.-1' held on 18.03.2024 to justify Government Order dated 28.02.2024 of Home Department by which 'Applicant' came to be transferred from post of 'D.C.P. (Traffic)' in establishment of

'Commissioner of Police, Pimpri Chinchwad' to post of 'S.P.' in Maharashtra Police Academy Nashik'. The 'P.E.B.-1' in its last meeting held on 10.07.2024 was expected to have atleast deliberated about 'Office Memorandum' dated 02.02.2024 of 'Ministry of Personnel Public Grievances and Pensions Department of Personnel and Training' and decided to ascertain views of 'Heads' of all 'Police Establishments' such as (i) 'Commissioners of Police' (ii) 'Special I.G.P.s' (iii) 'S.P.s' about how to concomitantly implement provisions of law under 'Section 22N(1)' and 'Section 22N(2)' of 'Maharashtra Police Act 1951' relating to 'Transfers & Postings' of 'Police Personnel' while ensuring protection of 'Legal Rights' of 'Police Personnel' under 'Section 2(d)' of the 'The Right of Persons With Disabilities Act 2016' who are also placed in roles of 'Care Givers' to related 'Disabled Persons'.

24. The Home Department which hosts 'P.E.B.-1' in its last meeting held on 10.07.2024 on other hand has conveniently side stepped specific directions given on 24.06.2024 to review decision about transfer of 'Respondent No.6' effected without any recommendation of 'P.E.B.-1' and implemented with unexplained haste by Government Order dated 28.02.2024 of Home Department.

25. The Home Department would certainly have done much better by taking an enlightened path by referring to progressive 'Policy Guidelines' adopted since long by 'Ministry of Personnel Public Grievances and Pensions Department of Personnel and Training' in respect of 'Government Servants' of 'Central Government' who are in role of 'Care Givers' under 'Section 2(d)' of 'The Rights of Persons with Disabilities Act, 2016'. The lament is that case of Applicant has thus far failed to stir up the collective conscience of 'P.E.B.-1' even though it has been recorded in 'Minutes of Meeting' that 'Son' of 'Applicant' is afflicted by 'Mental Retardation' to extent of 75%. The remorse is also that 'P.E.B.-1' lacked sense of introspection at time of making successive recommendations to 'Competent Authority' under 'Section 22N(2)' of 'Maharashtra Police Act, 1951' which were adverse to the

cause of Applicant. The 'P.E.B.-1' has clearly fallen short of expectation; as it was required to distinguish case of Applicant from those of others from cadre of 'DCP/SP (Non Cadre)' considering that severity of 'Personnel Hardship' of Applicant had been specifically highlighted in proposal submitted by 'Commissioner of Police, Pimpri-Chinchwad' through 'DGP, Maharashtra State' to 'Home Department' prior to transfer of Applicant from post of 'D.C.P. (Traffic)' in establishment of 'Commissioner of Police, Pimpri-Chinchwad' to post of 'S.P.' in 'Maharashtra Police Academy, Nashik' by Government Order dated 28.02.2024 of Home Department.

26. The directions in (a) Election Commission of India letter dated 21.12.2023 (b) Election Commission of India letter dated 19.01.2024 and (c) Election Commission of India letter dated 24.01.2024 are not inclusive enough of provide for sympathetic consideration in exceptional circumstances of requests made by such 'Government Servants' including 'Police Personnel' serving under 'State Governments' although 'Ministry of Personnel, Public Grievances and Pensions; Department of Personnel and Training' 'Office Memorandum' dated 08.10.2018' and 'Office Memorandum' dated 02.02.2024 have been endorsed to Election Commission of India as well as other 'Constitutional Bodies' such as 'UPSC' & 'CAG'.

27. The transfer of Applicant from post of 'D.C.P. (Traffic)' in establishment of 'Commissioner of Police, Pimpri-Chinchwad' to post of 'S.P.' in 'Maharashtra Police Academy, Nashik' is classic instance of overall indifference within 'Home Department' to strive towards implementation of 'The Right of Prisons With Disability Act 2016' as has been repeatedly directed by '**Hon'ble Supreme Court of India**' and several '**Hon'ble High Courts**' through catena of 'Judgments' appreciably enlisted under '**Pathways to Access : Courts On Disability Rights**' available on '**Website of 'Ministry of Social Justice and Empowerment; Department of Persons with Disabilities (Divyangjan)' of 'Government of India'**'.

28. **The ‘Hon’ble High Court of Bombay’ at Goa by ‘Judgment’ dated 13.08.2024 in Writ Petition No.382 of 2024** which had been filed by lady ‘Police Sub Inspector’ who has ‘Child’ suffering from ‘Mild Autism’ has recently directed cancellation of her transfer in consideration of ‘Legal Rights’ as ‘Care Giver’ under ‘Section 2(d)’ of ‘The Rights of Person With Disabilities Act, 2016’.

29. **The ‘Hon’ble High Court of Bombay’ at Goa in Writ Petition No.382 of 2024 in its ‘Judgment’ dated 13.08.2024** while granting prayers of concerned lady ‘Police Sub Inspector’ has made following pertinent observations which are equally applicable to case of Applicant:-

*“29. This Court cannot be oblivious to the special concerns which arise as in the petitioner’s case who is a part of the police force. The provisions of the Disabilities Act sub-serves the significant constitutional object of ensuring that women are not deprived of their due participation as members of the work force. If we do not take the aforesaid view, in the facts of this case, the petitioner may be constrained to leave the work force or face trauma if the impugned order is given effect to despite the special needs of the child.*

*30. There is nothing adverse reported against the petitioner. The child is in need of the support of his mother. The object of the Disabilities Act can be effectuated only if the petitioner is in close proximity to the child. The present facts are such that the child had to be re-admitted to the school in Ponda else he would have suffered demotion by two standards. The petitioner’s transfer outside Ponda in the present facts will be a barrier in the way of the child’s full and effective participation and inclusion in the society.*

*31. The petitioner’s transfer on completion of a tenure is a routine transfer. There are no compelling administrative exigencies brought on record in the present case necessitating such a transfer.*

*32. It is not as if the administration will in any manner be prejudiced if the petitioner is retained at Ponda. We do appreciate that we have very limited scope in interfering with administrative matters, transfer being essentially an administrative function which should be best left to the respondents. In ordinary course, we could have directed the respondents to consider the case of the petitioner for retention at Ponda favourably. The facts of the case are such that the special needs of the child far outweigh the guidelines requiring the routine transfer especially when there are no compelling administrative reasons to transfer the petitioner from her present place of posting. The child’s Autism Spectrum Disorder has escalated to 70 percent and hence it is imperative that the petitioner is retained at Ponda SB Centre where she is presently posted to avoid any untoward situation to the child.*

*33. It is in the peculiar facts of this case that we are inclined to quash and set aside the impugned order. In our opinion, retaining the petitioner at Ponda at SB Centre will help in achieving a balance between the petitioner’s effective participation in the work force as well as taking care of the special needs of the child which ultimately subserves the object of the Disabilities Act.*

*34. We make it clear that in future, depending upon the administrative exigencies and considering the special needs of the child, it will always be open for the respondents to take appropriate decision on her transfer. Learned Counsel for*

*the petitioner submitted, on instructions, that he does not wish to press for the other reliefs prayed for in the petition.*

30. The 'Son' of 'Applicant' who is 'Mentally Retarded' to an extent 75% which is categorized as 'Benchmark Disability' would certainly suffer in deep silence about the absence of his 'Father'. The Applicant on other hand would be left helpless as he would be unable to take care of his 'Son'; if he were to be compelled to join on post of 'S.P.' in 'Maharashtra Police Academy, Nashik'.

31. The transfer of 'Respondent No.6' in unexplained haste to establishment of 'Commissioner of Police, Pimpri-Chinchwad' by Government Order dated 28.02.2024 of Home Department without recommendation of 'P.E.B.-1' smacks of external influences at play alongwith signs of benevolence showered by Home Department when instead 'Respondent No.6' should have been made to join as 'Additional SP (Railways), Pune' as per earlier Government Order dated 20.11.2023 of Home Department. The transfer of 'Respondent No.6' therefore cannot be upheld as it suffers from vices of both (a) 'Arbitrary Exercise' & (b) 'Malafide Exercise' of 'Statutory Powers' under provisions of 'Section 22N(2)' of 'The Maharashtra Police Act, 1951'.

32. The transfer of 'Respondent No.6' effected by Government Order dated 28.02.2024 of Home Department to establishment of 'Commissioner of Police, Pimpri-Chinchwad' for reasons elucidated above is quashed and set aside with liberty granted to 'P.E.B.-1' to decide whether they would like to enforce earlier 'Home Department Government Order dated 20.11.2023' by which 'Respondent No.6' had been transferred to 'Vacant Post' of 'Additional SP (Railways) Pune' or recommend transfer of 'Respondent No.6' to any other post earmarked for 'SP/DCP (Non Cadre)'.

33. The transfer of Applicant effected by Government Order dated 28.02.2024 of Home Department from post of 'D.C.P. (Traffic) in establishment of 'Commissioner of Police, Pimpri-Chinchwad' to post of 'S.P.'

in 'Maharashtra Police Academy, Nashik' for specific reasons of upholding his 'Legal Rights' as 'Care Giver' to 'Son' who is 'Mentally Retarded' to extent of 75% which is categorized as 'Benchmark Disability' and to implement 'Section 2(d)' of 'The Rights of Persons with Disabilities Act, 2016' co-read with entitlement of tenure as SP/ACP (Non Cadre) at 'One Place of Posting' under 'Section 22(N)(1)(a)' of the 'Maharashtra Police Act, 1951' affirmatively is quashed and set aside with liberty granted to 'P.E.B-1' to recommend transfer Applicant on either post of 'D.C.P. (Headquarter)' in establishment of 'Commissioner of Police, Pimpri Chinchwad' which stands vacated upon setting aside of transfer of 'Respondent No.6' or to any other earmarked post of 'SP/DCP (Non Cadre)' within establishments of either (a) 'Commissioner of Police, Pune' or (b) 'Commissioner of Police, Pimpri-Chinchwad'.

34. The 'Additional Chief Secretary, Home Department' would be expected to act with alacrity within 'One Week' to convene meeting of 'P.E.B-1' to decide about their recommendations for new transfers of both 'Applicant' & 'Respondent No.6' and then seek expeditious approval from 'Competent Authority' designated under 'Section 22N(2)' of 'The Maharashtra Police Act, 1951'.

### **ORDER**

- (i) The Original Application No. 276/2024 is Allowed.
- (ii) No Order as to Costs.

**Sd/-**

**(Debashish Chakrabarty)**  
**Member (A)**

Place: Mumbai

Date: 09.09.2024

Dictation taken by: N.M. Naik.

Uploaded on: \_\_\_\_\_