

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.1215 OF 2023**

**DISTRICT : THANE**

**Sub.:- Transfer**

Shri Anil Ganpat Pawar. )  
Age : 57 Yrs, Occu.: Government Service )  
as Police Sub-Inspector, Traffic Branch, )  
Bhiwandi, District Thane, R/o. )  
Pawandham Complex, Nandan Apartments,) )  
4<sup>th</sup> Floor, 403, Kalya (W), District : Thane. )...**Applicant**

**Versus**

The Commissioner of Police, Thane City, )  
Through Deputy Commissioner of Police, )  
Head Quarter-1, Thane City. )...**Respondent**

**Shri A.V. Bandiwadekar, Advocate for Applicant.**

**Smt. A.B. Kololgi, Presenting Officer for Respondent.**

**CORAM : Debashish Chakrabarty, Member-A**

**DATE : 02.04.2024**

**JUDGMENT**

1. The Applicant who is 'Police Sub-Inspector' has invoked provisions of 'Section 19' of 'Administrative Tribunals Act 1985' to challenge 'Transfer Order' dated 18.08.2023 of 'Commissioner of Police, Thane' by which he was posted from 'Traffic Sub-Division; Bhiwandi' to 'Thane Nagar; Police Station'.

2. The learned Advocate for Applicant stated that by earlier 'Transfer Order' dated 23.8.2021 of 'Commissioner of Police, Thane', the Applicant had been posted from 'Special Branch' to 'Traffic Branch' under 'Deputy Commissioner of Police, Traffic Division, Thane'.

3. The learned Advocate for Applicant then stated that 'Police Sub-Inspectors' have 'Normal Tenure' of 2 years at 'Police Station' or 'Branch' as per provisions of 'Section 22N(1)(c)' of 'Maharashtra Police Act, 1951'. However, Applicant was not allowed to complete 'Normal Tenure' of 2 years because from 'Traffic Control Branch; Thane City', he came to be temporarily deployed to 'Traffic Sub-Division; Bhiwandi' by Order dated 06.06.2022 of 'Deputy Commissioner of Police, Traffic Division, Thane'. Thereafter again within 14 months; Applicant came to be transferred from 'Traffic Sub-Division; Bhiwandi' to 'Thane Nagar Police Station' by 'Transfer Order' dated 18.08.2023 of 'Commissioner of Police, Thane'.

4. The learned Advocate for Applicant reiterated that having been posted to 'Traffic Branch' by earlier 'Transfer Order' dated 23.8.2021 of 'Commissioner of Police, Thane' and as 'Police Sub-Inspectors' have 'Normal Tenure' of 2 Years under Section 22N(1)(c) of 'Maharashtra Police Act 1951'; Applicant should not have been transferred to 'Thane Nagar; Police Station' by 'Transfer Order' dated 18.08.2023 of 'Commissioner of Police, Thane'. In fact, it was expected that Applicant would be allowed to serve as 'Police Sub-Inspector' in 'Traffic Sub-Division, Bhiwandi' even after completing 'Normal Tenure' of 2 Years within 'Traffic Branch', as he is due to retire on 31.05.2024.

5. The learned Advocate for Applicant further contended that provisions of 'Section 22 I' of 'Maharashtra Police Act 1951' was also contravened because composition of 'PEB' at level of 'Commissioner of Police, Thane' was compromised when it was decided to transfer Applicant on 18.08.2023 from 'Traffic Sub-Division; Bhiwandi' to 'Thane Nagar; Police Station'.

6. The learned Advocate for Applicant concluded by emphasizing that 'Transfer Order' dated 18.08.2023 of 'Commissioner of Police, Thane' refers to report dated 12.07.2023 submitted by 'Senior Police Inspector, Bhiwandi City Traffic Branch' and 'Deputy Commissioner of Police, Traffic Division, Thane' dated 17.07.2023. The 'Transfer Order' dated 18.08.2023 of 'Commissioner of Police, Thane' to post the Applicant from 'Traffic Sub-Division, Bhiwandi' to 'Thane Nagar Police Station' was issued under signature of 'Deputy Commissioner of Police, Head Quarter-1, Thane City'. The 'File Notings' clearly indicates that decision to transfer Applicant was not taken by 'PEB' but the proposal was directly approved by 'Commissioner of Police, Thane City'. Thus, it was clear that there was no compliance of provisions regarding prior approval of 'PEB' as per provisions of 'Section 22J' of 'Maharashtra Police Act 1951'.

7. The learned PO relied on 'Affidavit-in-Reply' dated 02.11.2023 filed on behalf of 'Commissioner of Police, Thane'. She stated that 'Normal Tenure' of 'Police Sub-Inspector' was 2 years in 'Police Station' or 'Branch' under 'Section 22N(1)(c)' of 'Maharashtra Police Act 1951'. However, Applicant was transferred from 'Traffic Control Branch, Thane City' to 'Traffic Sub-Division, Bhiwandi' which was internally within 'Traffic Branch', which did not constitute transfer out of 'Traffic Branch' so as to attract provisions of 'Section 22N(1)(c)' of 'Maharashtra Police Act 1951'.

8. The learned PO further stated that it was pertinent to note that there were several 'Public Complaints' both 'Oral & Written' against Applicant when he was serving in 'Traffic Sub-Division, Bhiwandi'. Even after repeated instructions from his 'Superior Officers' to make improvements; there was no discernable change in public interactions of Applicant. The transfer of Applicant from 'Traffic Sub-Division, Bhiwandi' to 'Thane Nagar Police Station' was thus done primarily on grounds of 'Public Complaints'; as such grounds for 'Mid-Term Transfers' have been envisaged under 'Proviso Clauses' of 'Section 22N(1)'

of 'Maharashtra Police Act 1951' and also 'Section 22N(2)' of 'Maharashtra Police Act 1951'.

9. The learned PO lastly relied on 'Additional Documents' placed on record by way of 'Additional Affidavit-in-Reply on behalf of 'Commissioner of Police, Thane' dated 21.11.2023 which included the (i) 'File Notings' approved by 'Commissioner of Police, Thane' on 04.08.2023, (ii) 'Default Report' of Deputy Commissioner of Police, Traffic Division, Thane City dated 12.10.2023 to justify 'Mid-Term Transfer' of Applicant from 'Traffic Sub-Division, Bhiwandi' to 'Thane Nagar Police Station'.

10. The Applicant was transferred out of 'Traffic Sub-Division, Bhiwandi' just few days' shy of 'Normal Tenure' of 2 Years in 'Traffic Branch'. Thus, Applicant had virtually completed 2 Years of 'Normal Tenure' in 'Traffic Branch' serving under 'Deputy Commissioner of Police; Traffic Division, Thane' as extended 'Normal Tenure' of 3 Years is limited only to those serving in 'Crime Branch' and 'Special Branch' as per provisions of 'Section 22N(1)(c)' of 'Maharashtra Police Act 1951'.

11. The Applicant after joining the 'Traffic Branch' on 23.08.2021 as per earlier 'Transfer Order' dated 23.8.2021 of 'Commissioner of Police, Thane' was not moved out of 'Traffic Branch' while working under 'Deputy Commissioner of Police; Traffic Division, Thane' but was shifted laterally to 'Traffic Sub-Division, Bhiwandi' on 06.06.2022 and continued to serve there till he was posted to 'Thane Nagar Police Station' by 'Transfer Order' dated 18.08.2023 of 'Commissioner of Police, Thane'. Thus, as such there was no contravention of provisions of 'Normal Tenure' of 2 Years under 'Section 22N(1)(c)' of 'Maharashtra Police Act 1951'.

12. The provisions of 'Section 22N(1)' of 'Maharashtra Police Act 1951' have to be read together with its 'Proviso Clauses' which gives powers to 'State Government' to transfer any 'Police Personnel' prior to completion

of their 'Normal Tenures'. The powers of 'State Government' under 'Proviso Clauses' of 'Section 22(N)(1)' are augmented by provisions in 'Section 22N(2)' which gives powers in exceptional cases to 'Competent Authority' to make 'Mid-Term Transfers' of 'Police Personnel' in 'Public Interest' and on account of 'Administrative Exigency'.

13. The provisions of 'Section 22N(1)' and 'Section 22(N)(2)' do not provide any exceptions from transfers to those 'Police Personnel' who are due to retire within 'One Year'; unlike under 'Section 5(1)(a)' of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act 2005' which is applicable only to 'Government Servants'. Thus, no consideration was also required to be given to the fact that Applicant was due to retire within 'One Year' before he was posted from 'Traffic Sub-Division; Bhiwandi' to 'Thane Nagar Police Station'. Further, policy guidelines in GAD GR dated 09.08.2018 are also not made applicable to 'Police Personnel'.

14. The ***Hon'ble Supreme Court of India in B Varadha Rao v State of Karnataka, 1986 (3) SLR 60 (SC) : (1986) 4 SCC 624 : AIR 1987 SC 287*** has also observed that continued posting at one station or in one department not conducive to good administration as such continued posting creates vested interest. Further, ***Hon'ble Supreme Court of India in UOI v NP Thomas, AIR 1993 SC 1605 : (1993) Supp (1) SCC 704*** Hon'ble Supreme Court of India has observed that since posts in public employment are generally transferable post, it follows that an employee has no vested right to remain at the post of his posting. Then ***Hon'ble Supreme Court of India in UOI v S.L. Abbas, AIR 1993 SC 2444 : (1993) 4 SCC 357*** it has further observed that who is to be transferred where, is a matter for the appropriate authority to decide.

15. The 'Commissioner of Police, Thane' undoubtedly took immediate cognizance of adverse report against Applicant submitted to 'Senior Police Inspector, Bhiwandi City, Traffic Branch' on 12.07.2023 and by 'Deputy Commissioner; Traffic Division, Thane' on 17.07.2023 which was later substantiated by his detailed 'Default Report' on 12.10.2023. The detailed 'Default Report' of 'Deputy Commissioner; Traffic Division, Thane' dated 12.10.2023 was considered by 'PEB' to give 'ex-post-facto' approval to 'Transfer Order' dated 18.08.2023 of 'Commissioner of Police, Thane'. Further, as affirmed in 'Para 6' of 'Affidavit-in-Reply' filed on 02.11.2023 on behalf of 'Commissioner of Police, Thane'; the 'PEB' while considering 'Default Report' of 'Deputy Commissioner; Traffic Division, Thane' dated 12.10.2023 had decided to exercise powers under 'Proviso Clauses' of 'Section 22N(1)' of 'Maharashtra Police Act 1951'.

16. The Applicant was posted by 'Transfer Order' dated 18.8.2023 of 'Commissioner of Police, Thane' from 'Traffic Sub-Division, Bhiwandi' to 'Thane Nagar Police Station' but without prior approval being taken from 'PEB' as required under provisions of 'Section 22J' of 'Maharashtra Police Act 1951'. The Applicant admittedly was transferred from 'Traffic Sub-Division, Bhiwandi' to Police Station; Thane City' by 'Transfer Order' dated 23.08.2023 of 'Commissioner of Police, Thane' by invoking 'Proviso Clauses' of 'Section 22N(1)' of 'Maharashtra Police Act 1951'; which are 'Statutory Powers' placed exclusively in the domain of 'State Government', as these provisions begin with 'non-obstante' phrase '*Provided that State Government may transfer any Police Personnel prior to completion of his Normal Tenure if-*'. The provisions of 'Section 2(14B)' of 'Maharashtra Police Act 1951' defines 'State Government' as 'Government of Maharashtra'.

17. The decision of 'Commissioner of Police, Thane' to exercise 'Statutory Powers' under 'Proviso Clauses' of 'Section 22N(1)' of 'Maharashtra Police Act 1951' would be valid in eyes of law, only if 'State Government' has delegated these 'Statutory Powers'. The 'Commissioner

of Police, Thane' could have transferred the Applicant from post of 'Traffic Sub-Division, Bhiwandi' to Police Station; Thane City' in due course after the detailed 'Default Report' of 'Deputy Commissioner; Traffic Division, Thane' dated 12.10.2023 had been duly considered by 'PEB' as it would have also made Applicant eligible to be transferred under 'Section 22N(1)(c)' on completion of 'Normal Tenure' of '2 Years' in 'Traffic Branch' without necessitating invocation of 'Proviso Clauses' which are 'Statutory Powers' vested only with 'State Government'. However, no such 'Notification' of 'State Government' was produced during course of hearing to establish delegation of these 'Statutory Powers'. Hence, the 'Transfer Order' dated 18.08.2023 of 'Commissioner of Police, Thane' qua the Applicant becomes liable to be quashed and set aside only on point of law; as it would otherwise survive as an instance of exercise of 'Statutory Powers' beyond "Competency Inherently Bestowed By Law". Hence, the following order.

**ORDER**

- (i) The Original Application is Allowed.
- (ii) The 'Transfer Order' dated 18.08.2023 of 'Commissioner of Police, Thane' to post Applicant from 'Traffic Sub-Division; Bhiwandi' to Police Station; Thane City' is quashed and set aside.
- (iii) No Order as to Costs.

Sd/-  
**(DEBASHISH CHAKRABARTY)**  
**Member-A**

Mumbai  
Date : 02.04.2024  
Dictation taken by :  
S.K. Wamanse.

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