

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

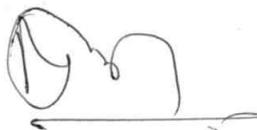
ORIGINAL APPLICATION NO.237 OF 2016

DISTRICT : MUMBAI

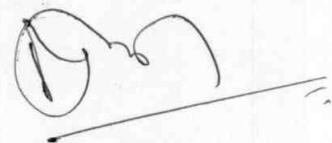
- 1) Shri Pankaj Vishram Rasam,)
Occ. Police Constable,)
Having office at Mumbai Police,)
Motor Transport Section,)
Nagpada, Mumbai - 8,)
R/o. Worli Police Camp, Sir Pochkhanwala)
Road, A-Block, Room No.4, Mumbai - 30.)
- 2) Shri Nitin Hemraj Baisane,)
Occ. Police Constable, having office at)
Mumbai Police, Motor Transport Section,)
Nagpada, Mumbai 8,)
R/o. Room No.10, Shree Chakradhar)
Niwas, Anand Wadi, Devdatta Colony,)
Kalyan (E), District : Thane.)
- 3) Shri Bhushan Pandurang Patil,)
Occ. Police Constable, having office at)
Mumbai Police, Motor Transport Section,)
Nagpada, Mumbai - 8,)



- R/o. Shivaji Nagar Vasahat,)
Dr. A.B. Road, Worli,)
Mumbai 30.)
- 4) Shri Sanket Vishwanath Kadam,)
Occ. Police Constable, having office at)
Mumbai Police, Motor Transport Section,)
Nagpada, Mumbai - 8,)
R/o. B.D.D. Chawl No.70,)
Room No.58, Bhagoji Waghmare Marg,)
Worli, Mumbai 18.)
- 5) Shri Nilesh Bapu Londhe,)
Occ. Police Constable, having office at)
Mumbai Police, Motor Transport Section,)
Nagpada, Mumbai 8)
R/o. 3/32, Dadar Police Line, Bhawani)
Shankar Road, Dadar (W), Mumbai 28.)
- 6) Shri Kiran Vitthal Shinde,)
Occ. Police Constable, having office at)
Mumbai Police, Motor Transport Section,)
Nagpada, Mumbai - 8,)
R/o. Room No.4, Shinde Chawl,)
Surendra Cottage, Tembi Pada Marg,)
Bhandup, Mumbai 78.)
- 7) Shri Avinash Amrutrao Devkar,)

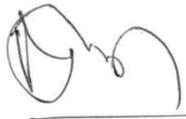


- Occ. Police Constable, having office at)
 Mumbai Police, Motor Transport Section,)
 Nagpada, Mumbai - 8,)
 R/o. 2/20, Dadar Police Line,)
 Bhawani Shankar Road,)
 Dadar (W), Mumbai 28.)
- 8) Shri Kiran Mohan Lalge,)
 Occ. Police Constable, having office at)
 Mumbai Police, Motor Transport Section,)
 Nagpada, Mumbai - 8.)
 R/o. 24/43, Railway Police Line,)
 Pant Nagar, Ghatkopar (E), Mumbai 75.)
- 9) Shri Sandip Hiranman Bramhane,)
 Occ. Police Constable, having office at)
 Mumbai Police, Motor Transport Section,)
 Nagpada, Mumbai - 8.)
 R/o. Panchratna C.H.S., Mig-2,)
 Birla College Road, Chikanghar,)
 Kalyan (W), District : Thane.)
- 10) Shri Ranjit Sadashiv Bhosale,)
 Occ. Police Constable, having office at)
 Mumbai Police, Motor Transport Section,)
 Nagpada, Mumbai - 8,)
 R/o. 42/6, Worli Police Camp,)
 Sir Pochkhanwala Road, Worli,)

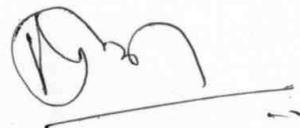


- Mumbai - 30.)
- 11) Shri Rajesh Ramrao Mhamunkar,)
 Occ. Police Constable, having office at)
 Mumbai Police, Motor Transport Section,)
 Nagpada, Mumbai - 8.)
 R/o. 601, Prathamesh Park,)
 Sec-1, Kalamboli, Navi Mumbai.)
- 12) Shri Abhishek Manohar Rane,)
 Occ. Police Constable, having office at)
 Mumbai Police, Motor Transport Section,)
 Nagpada, Mumbai - 8.)
 R/o. B-Block, Room No.6, Worli Police)
 Camp, Sir Pochkhanwala Road, Worli,)
 Mumbai 30.)
- 13) Shri Mahesh Jagannath Bane,)
 Occ. Police Constable, having office at)
 Mumbai Police, Motor Transport Section,)
 Nagpada, Mumbai - 8.)
 R/o. A/P. Wategaon, Tal. Walwa,)
 District : Sangli.)
- 14) Shri Rahul Chandrakant Ragade,)
 Occ. Police Constable, having office at)
 Mumbai Police, Motor Transport Section,)
 Nagpada, Mumbai - 8.)

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- R/o. Guru Angan Socy, Room No.3,)
Ghorpade Chowk, D.P. Road, Katrap,)
Badlapur (E), District : Thane.)
- 15) Shri Aasif Shaukat Pinjari,)
Occ. Police Constable, having office at)
Mumbai Police, Motor Transport Section,)
Nagpada, Mumbai – 8.)
R/o. Prabhat C.H.S., Building No.9,)
Room No.207, MMRDA,)
Kanjur Marg (W), Mumbai.)
- 16) Shri Pradeep Balu Patil,)
Occ. Police Constable, having office at)
Mumbai Police, Motor Transport Section,)
Nagpada, Mumbai – 8.)
R/o. Naigaon Police Head Quarter,)
Building No.9/29, B.J. Devrukhakar Road,)
Naigaon, Dadar, Mumbai 14.)
- 17) Shri Bhushan Jaywant Jagtap,)
Occ. Police Constable, having office at)
Mumbai Police, Motor Transport Section,)
Nagpada, Mumbai – 8.)
R/o. Mmrda Wasahat, Building No.7,)
Room No.519, Near Kanjur Marg Rly.)
Stn., Kanjur Marg (W), Mumbai.)
- 18) Shri Siddharth Devram Jagtap,)



- Occ. Police Constable, having office at)
 Mumbai Police, Motor Transport Section,)
 Nagpada, Mumbai – 8.)
 R/o. B.D.D. Chawl No.67, Room No.66,)
 Bhagoji Waghmare Marg, Worli,)
 Mumbai – 18.)
- 19) Shri Sudhir Subhash Margure,)
 Occ. Police Constable, having office at)
 Mumbai Police, Motor Transport Section,)
 Nagpada, Mumbai – 8.)
 R/o. K/7, Room No.521,)
 Swapnapurti Apartment, MMRDA,)
 Kanjur Marg (W), Mumbai.)
- 20) Shri Aaditya Ashok Jadhav,)
 Occ. Police Constable, having office at)
 Mumbai Police, Motor Transport Section,)
 Nagpada, Mumbai – 8.)
 R/o. E/5, Room No.9, Marol-Maroshi Rd.)
 Andheri (E), Mumbai – 59.)
- 21) Shri Vishwanath Mamtu Rathod,)
 Occ. Police Constable, having office at)
 Mumbai Police, Motor Transport Section,)
 Nagpada, Mumbai – 8.)
 R/o. E-13/15, Marol Police Camp,)
 Marol- Maroshi Road,)

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Andheri (E), Mumbai 59.)

- 22) Shri Sushil Dinkar Banker,)
 Occ. Police Constable, having office at)
 Mumbai Police, Motor Transport Section,)
 Nagpada, Mumbai - 8.)
 R/o. F/22, Naigaon, New Police Line,)
 G.D. Ambekar Marg, Mumbai 12.)... **Applicants**

Versus

- 1) The Deputy Commissioner of Police,)
 Motor Transport Department,)
 Having office at Nagpada, Mumbai - 8.)
- 2) The Commissioner of Police,)
 Mumbai, having office at Mumbai Police)
 Commissionarate L.T. Marg,)
 Opp. Crawford Market, Fort,)
 Mumbai - 400 001.)
- 3) The Additional Commissioner of Police,)
 Mumbai, Armed Police Fort (L.A.),)
 Having office at Naigaon, Mumbai 14.)...**Respondents**

Shri B.A. Bandiwadekar, Advocate for Applicants.

Ms. N.G. Gohad, Presenting Officer for Respondents.

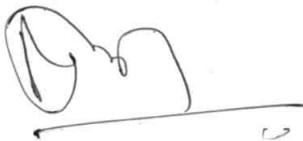
P.C. : R.B. MALIK (MEMBER-J)



DATE : 22.08.2016

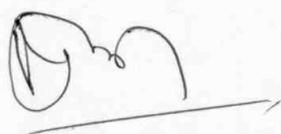
JUDGMENT

1. This Original Application (OA) is brought by 22 Police Constables who had been sent to work as Drivers in the Motor Transport Department of the Police. They seek their transfer back to the Constabulary.
2. I have perused the record and proceedings and heard Shri B.A. Bandiwadekar, the learned Advocate for the Applicants and Ms. N.G. Gohad, the learned Presenting Officer for the Respondents.
3. It is not in dispute that the Applicants came to be appointed as Police Constables and they after their initial stint in the Constabulary were transferred to work as Police Drivers. It seems that they have now worked there for quite some time. Pertinently, their appointment as would be reflected by a sample order of 1.9.2010 (Exh. 'C', Page 44 of the Paper Book) were to work as Constable-cum-Driver and again indisputably, they had given undertaking in that behalf. Now, however, by an extremely detailed OA running into 38 pages, the Applicants seek the relief which shall be presently indicated. They have made representations for their transfer back. An order in that



behalf was made on 30th July, 2015 which is at Exh. 'A' (Page 39 of the P.B.). It was therein indicated that all the Police Constables of 2009 Batch who were working as Drivers were informed that they were repeatedly making representations for their transfers back. About 700 trainees were taking training and after their return from the training, the recommendations for transfer back would be made in so far as 2009 Batch Constables were concerned. Further, the Constables of that Batch should apply afresh for the transfer once the transfer process went underway for the year 2016. Now, it is this order, which is impugned herein. The Applicants wanted it to be set aside and seek a direction for the 1st Respondent maker thereof to immediately send the Applicants back on transfer. Further, they seek the benefit of the order made by this Tribunal in **OA 841/2015 (Shri Sainath L. Sanap and 9 others Vs. The Deputy Commissioner of Police, Motor Transport Department and 3 others, dated 29th January, 2016)** made by a learned Member (J) sitting here in the Principal Bench.

4. It appears from a document at Exh. 'G' collectively (Page 57 of the P.B.) that the normal period of deputation, if one might call it that way to function as a Driver would be three years. The facts of the matter must



have become quite clear. The Applicants came to be appointed to the post which has been designated as Constable-cum-Driver. They are working as Drivers and it seems they have completed a tenure of three years in that particular post.

5. The order in the matter of **S.L. Sanap** (supra) was in the exactly similar set of facts and the Applicants therein were so similarly placed as the present Applicants. The Bench was told on behalf of the 2nd Respondent that the normal tenure of a Police Constable would be five years in accordance with the provisions of Section 22 N (1)(b) of the Maharashtra Police Amendment Act, 2015. He was also told just as I was told here that there was shortage of Drivers in the Police Department apparently because after 2008, there have not been any recruitment to the post of Drivers. On behalf of the Applicants in that matter, reliance was also placed on another Judgment of this Tribunal (CORAM : Hon'ble Vice-Chairman) in **OA 692/2011 (Mr. Sarjerao B. Gaikwad and 11 others Vs. The State of Maharashtra and 3 others, dated 10.7.2014)** to be hereinafter called **Gaikwad's** case.

6. It appears that to the present matter, the transfers of the Applicants as Drivers being pre-2015 , it

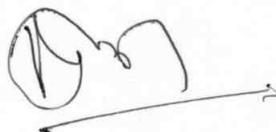
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will be governed by the state of Rule such as it was then prevailing.

7. The learned Member (J) in **Sanap's** case rejected the contention on behalf of the Applicants that they having been appointed as Police Constables could not have been sent to work as Drivers. In fact, in **Gaikwad's** case, the Applicants therein were appointed as Constables and not Constable-cum-Driver and still this Tribunal held that the Applicants could not avoid working as Drivers as a part of their duty. This fact was noted in **Sanap's** case as well. It was held in **Sanap's** case that it was obligatory upon Applicants to work as Police Drivers, if they were sent therein. Therefore, the order as such could not be held to be illegal or without jurisdiction. Paras 8 to 20 of the **Sanap's** case in fact need to be reproduced for facility and so also, the final order therein.

“8. The Applicants have filed rejoinder-affidavit and submitted that there is fine distinction between transfer and deputation. The Applicants are not transferred but are sent on deputation. It is stated that the Respondents are obliged to furnish strong and convincing reasons for not cancelling the deputation of the Applicants.

A handwritten signature, possibly 'M. J.', is written in black ink. Below the signature, a horizontal arrow points to the right.

9. Heard Shri A.V. Bandiwadekar, the learned Counsel for the Applicant and Shri N.K. Rajpurohit, the learned Chief Presenting Officer for the Respondents. I have perused the affidavit-in-reply and the affidavit-in-rejoinder and various documents placed on record by the respective sides.

10. The learned Counsel for the Applicants submits that the order of deputation itself illegal since the Applicants were posted as Police Constable and there was no reason for they being deputed to the post of Police Constables -Drivers.

11. The learned Counsel for the Applicants placed reliance on one judgement delivered in O.A.No.692 of 2015 in the case of Sarjerao Baburao Gaikwad & Ors. Vs- The State of Maharashtra & Ors. dated 10.07.201. In the said judgement, similar issue was involved as to whether the Police Constable can be posted as Driver. It is submitted that in view of the judgement delivered in the said O.A., impugned order of deputation of the Applicants is illegal

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and in fact the deputation should have been cancelled immediately.

12. The impugned office order whereby the representation of the Applicants and like persons have been rejected is placed on record at Exhibit 'A' page no.21 of the Paper Book. The only question arises whether the said communication dated 30.7.2015 is legal or not?

13. I have perused the judgement in O.A.No.692 of 2015. It seems that the Applicants in the said O.A. were Police Constable and were appointed so. The Tribunal however held that the Police Constable can be posted as Driver, but his tenure will be restricted to three years from the date of joining, except in those cases where they are willing to be continued for another three years. That has been considered in view of the fact that the tenure of class- 3 employee on one post is three years. However, now the said tenure has been extended to 5 years by way of amendment in the Maharashtra Police Act.

14. In the present case the Applicants have been appointed as Police Constables- Police



Drivers and not as Police Constable only or exclusively. One of the order of appointment is placed on record at Exhibit 'C' at page no.24 to 26 of the paper book. It is in respect of Applicant Shri Sainath Laxman Sanap i.e. Applicant No.1. The subject of the said order reads as "(विषय:- मुंबई पोलीस भरती - २००९, पोलीस शिपाई/पोलीस शिपाई चालक पदावर नियुक्ती)" and the opening paragraph of the order reads as under:-

“संदर्भाधीन पत्रान्वये कळविल्यानुसार आपली मुंबई पोलीस भरती २००९ प्रक्रियेतर्गत मुंबई पोलीस दलात निवड झाली असून आपली खालील नमूद अटी व शर्तीच्या अधीन राहून दि.२५.०८.२०१० पासून पोलीस शिपाई/पोलीस शिपाई चालक पदावर नियुक्ती करण्यात येत आहे.”

(quoted from page no.24 of the O.A.)

15. In condition no.19 and 20 of the said order it has been stated as under:-

“१९. मुंबई पोलीस दलाच्या आवश्यकतेनुसार व आपण दिलेल्या हमीपत्रानुसार आपणास सेवा कालावधीत पोलीस चालक (Driver) कर्तव्य सुद्धा पार पाडणे बंधनकारक राहिल. यासाठी आपणास चालक परवाना (Driving Licence) मिळवणे आवश्यक असेल.

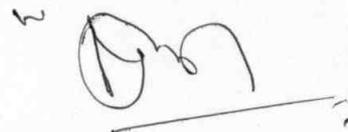


२०. पोलीस शिपाई चालक या पदावर नेमणूक केलेल्या उमेदवारांना पोलीस चालक पदातील कर्तव्याव्यतिरिक्त पोलीस मुख्यालयातील अन्य पोलीस कर्तव्ये सुद्धा पार पाडावी लागतील.”

16. In view of the aforesaid conditions in the appointment order it will be clear that the Applicants are appointed as Police Constable-Police Driver and in view of the conditions no.19 and 20 it was obligatory upon them to work as Police -Driver and to perform duties as Police-Driver.

17. In view of the aforesaid condition of service some of the Police Constables- Police Drivers have been deputed to serve as driver in the Motor Transport Department vide order dated 17.06.2012 and therefore the impugned order cannot be said to be illegible or without jurisdiction.

18. Learned Counsel for the Applicant has invited my attention to one office order which has been passed on 30.7.20215 by the Motor Transport Department, Nagpada, Mumbai. As per said order it seems that almost 700 Police Constables are undertaking training and after



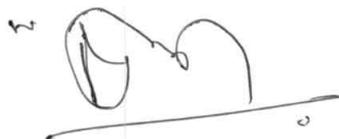
completion of their training the request of the Police Constables- Drivers who desire to be repatriated as Police Constables will be considered and the Police Constable -Drivers of the batch of 2009 are being considered for repatriation in the Annual General Transfer 2016. The said order is at Page No.21 (Exh. 'A' of the paper book).

19. Learned Counsel for the Applicant admits that the Applicants will be satisfied if said directions are issued to the Respondents to consider their request for repatriation or transfer as Police Constable in the Annual General Transfer of 2016.

20. In view thereof, though there is no merit in the application, the application can be disposed of with following directions. Hence the order.

ORDER

Application is partly allowed.

A handwritten signature in black ink, consisting of a stylized 'S' or 'M' shape with a horizontal line underneath it.

The Respondents are directed to consider the request of the Applicants for being sent back to Armed Police Force (from where they were sent on deputation to Motor Transport Department) at the time of Annual General Transfer for the year 2016 sympathetically without being influenced by any of the observations in the order. No order as to costs.”

8. Nothing more needs to be paraphrased in the final order following the reasoning above quoted in **Sanap's** case. Mr. Bandiwadekar, the learned Advocate for the Applicants told me that the present Applicants be also placed at par with the Applicants of **Sanap's** case and the same direction be given. Ms. Gohad, the learned Presenting Officer, however, countered by contending that in one go, all the Applicants cannot be transferred back because that is the position, the administrative set up finds itself in. Again, the shortage of Drivers was cited as a reason.

9. In my opinion, even if it is true that the post itself entails the functioning as Driver-cum-Constable but a very prolonged and unusually long posting as a Driver and that too, only in so far as these Applicants are concerned,



would not be in keeping with the administrative requirements. However, on the practical side of it, for all one knows the 2016 transfer season, if one might call it that way is now over. But still, a direction emerging as a blending of the final orders in **Sanap** as well as **Gaikwad** can quite safely be made.

10. The Respondents are directed to consider the case of the present Applicants who have completed three years working as Drivers for transfer back as Constables within a period of four months from today. The Original Application is allowed to this extent with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
22.08.2016

22.08.16

Mumbai

Date : 22.08.2016

Dictation taken by :

S.K. Wamanse.

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