

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.353 OF 2020**

**DISTRICT : PUNE**

Shri Purshottam Dada Saheb Kokare. )  
Age : 40 Yrs., Occu.: API (FP), )  
R/o. 104/A, Binavanta Paradise, )  
Bhekraingar, Hadapsar, )  
Pune – 412 308. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through Addl. Chief Secretary, )  
Home Department, Mantralaya, )  
Mumbai – 400 032. )  
2. The Addl. Director General of Police )  
(CID), (M.S), Pune, having office at )  
Near Law College, Pashan Road, )  
Pune – 400 018. )...**Respondents**

**Mr. R.M. Kolge, Advocate for Applicant.**

**Mr. A.J. Chougule, Presenting Officer for Respondents assisted by  
Mrs. Kavita M. Kotkar, Law Officer.**

**CORAM : SHRI P.N. DIXIT, VICE CHAIRMAN (A)  
SHRI A.P. KURHEKAR, MEMBER (J)**

**DATE : 23.02.2021**

**PER : SHRI A.P. KURHEKAR, MEMBER-J**

**ORDER**

1. This Division Bench is constituted by the order of Hon'ble Chairperson dated 08.02.2021 for placing the reference made by one of us (A.P. Kurhekar, Member-J) in O.A.No.353/2020. In O.A.353/20, the Applicant who is working as Junior Finger Print Expert on the establishment of Additional Director General of Police, CID, Pune has challenged his transfer order dated 24.07.2020 which came to be passed invoking provisions of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as 'Transfer Act 2005' for brevity). However, in O.A, the Applicant has contended that he being working in specialized agency, the provisions of Maharashtra Police Act, 1951 would apply and not provisions of 'Transfer Act 2005'. This submission was basically founded on the decision rendered by this Tribunal earlier in **O.A.No.385/2015 (Gopinath Lokhande Vs. Additional Director General of Police) decided on 01.12.2015** wherein it has been held that it attracts the provisions of Maharashtra Police Act. During the course of hearing of O.A.353/2020, the order was passed on 03.02.2021 to place the matter before Division Bench, since the findings recorded in O.A.385/2015 found not acceptable, and therefore, reference was required to be made before the Division Bench.

2. It is on the above background, the reference was made as under :-

Whether the transfer of Junior Finger Print Expert working on the establishment of Respondent No.2 is governed by Maharashtra Police Act or by provisions of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as 'Transfer Act 2005'.

Accordingly, Hon'ble Chairperson was pleased to constitute this Division Bench to answer the reference.

3. We have heard the submissions advanced by Shri R.M. Kolge, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer assisted by Law Officer Mrs. Kavita M. Kotkar.

4. Indisputably, the Applicant was appointed as Wireless Operator/Head Constable in 2006 on the establishment of Respondent No.2. Later in 2012, he participated in the recruitment for the post of Searcher and got selected. Then in 2016, he came to be promoted as Junior Finger Print Expert/Assistant Police Inspector and since then, he is serving as Junior Finger Print Expert on the establishment of Respondent No.2.

5. Shri R.M. Kolge, learned Advocate for the Applicant vehemently urged that Crime Investigation Department headed by Additional Director General of Police is specialized agency within the meaning of Section 2(14A-1) of Maharashtra Police Act and for transfer of Applicant, the Respondent No.2 was required to follow the procedure laid down under Section 22J-3 read with Section 22J-4 of Maharashtra Police Act. He has further pointed out that the post of Junior Finger Print Expert is equivalent to the post of Assistant Police Inspector in terms of G.R. dated 09.05.2000 (Page No.160 of P.B.). Thus, according to him, the post of Junior Finger Print Expert is part and parcel of Crime Investigation Department and has to be treated as Police Personnel for the purposes of transfer. According to him, unless there is classification of the employees working in Crime Investigation Department, the entire unit of Crime Investigation Department has to be considered as a specialized agency for the purpose of transfer of a member of such agency and for such transfer, there has to be approval of Police Establishment Board (PEB) established as specialized agency within the meaning of Section

22J-3 read with Section 22J-4 of Maharashtra Police Act. He thus submits that the view taken in O.A.385/2015 is incorrect.

6. Per contra, Shri A.J. Chougule, learned Presenting Officer for the Respondents submits that the Applicant is working in Ministerial Staff/Technical Staff of Crime Investigation Department and it does not fall within the definition of Police Personnel for whose transfer, the provisions of Maharashtra Police Act would apply. He has further pointed out that considering the mode of appointment, nature of duties, it cannot be said that the post of Junior Finger Print Expert falls within the definition of Police Personnel. He has further pointed out that before 2015, the transfer orders were issued under the provisions of Maharashtra Police Act, but later Government by letter dated 25.11.2016 after taking opinion of Law and Judiciary informed to Respondent No.2 that the employee working in Finger Print Department are not covered under the term 'Police Personnel' and not governed by Maharashtra Police Act, but transfers are governed by the provisions of 'Transfer Act 2005' and since then, the transfers are made following the provisions of 'Transfer Act 2005'. He, therefore, submits that accordingly the Civil Services Board was constituted, which recommended the transfer of Applicant from Pune to Chandrapur and view taken in O.A.No.385/2015 is incorrect.

7. There is no denying that the appointments in Finger Print/Handwriting Expert of Crime Investigation Department are made by Clause 61 and 62 of Police Manual. As per Rule 61, the recruitment to the combined Ministerial establishment of Inspector General of Police, Deputy Inspector General of Police of the ranges, Deputy Inspector General of Police (Head Quarters), Director (Anti-Corruption and Prohibition Intelligence Bureau and Principal, Central Police Training School, Nashik is made by the Inspector General of Police by nomination ordinarily for appointment in lower grade. Whereas, Rule 62 provides for the recruitment of Finger Print, Handwriting and Photographic Bureau.

At this juncture, it would be apposite to reproduce Clause 62 of Police Manual, which is as under :-

**“62. Recruitment of the Staff of the Finger Print, Hand writing and Photographic Bureau –**

- (1) The staff of the Bureau will be recruited by the Deputy Inspector General of Police, Criminal Investigation Department, State of Bombay from amongst clerks or executive men working as Chief Operators and also from amongst persons not in Government service, in accordance with provisions contained in Rule 61.
  - (2) Junior Searcher, Finger Print Bureau : Appointment of Junior Searcher, Finger Print Bureau is made by direct recruitment subject to passing the Junior Searcher's Examination for confirmation.
- Note - Though minimum qualification in Higher Secondary Examination or Internship Examination in Arts or Science preference will be given to candidates having higher qualification.
- (3) Senior Searcher, Finger Print Bureau : Appointments of Senior Searcher in the Finger Print Bureau are made by promotion from Junior Searcher who pass the senior Searchers' Examination, and have to their credit 4 years' service in the Finger Print Bureau.
  - (4) Second Experts, Finger Print Bureau : Appointments are made by promotion from amongst Senior Searchers who have completed six years' service in the Bureau and those who pass the Experts' Examination.
  - (5) First Expert, Finger Print Bureau : Appointments of First Experts in the Finger Print Bureau are made by promotion from amongst Second Experts.
  - (6) Senior Expert, Finger Print Bureau : First Experts in Finger Print Bureau are promoted as Senior Experts.
  - (7) Director, Finger Print Bureau (Class II) : Appointment to this post is made by promoting Senior Experts in the Finger Print Bureau.
  - (8) Chief State Examiner of Documents, Poona and State Examiner of Documents, Ahmedabad / Rajkot : Appointments to these posts are ordinarily made by promotion from the rank of Assistant State Examiner of Documents.
  - (9) Assistant State Examiner of Documents : These posts are filled in by direct recruitment of candidates who passes the following qualifications :-

Age : Between 21 and 25 years.  
Academic and other

- Qualification : (i) A first or second class degree in Bachelor of Science with Chemistry and Physics.
- (ii) Knowledge of at least three out of the following languages : Hindi, Marathi, Gujarati and Urdu.
- (iii) Knowledge of Photography is considered as an additional qualification.

(10) Police Photographers (Foreman, photographic Bureau) : Appointment to the posts of Police Photographers is made by direct recruitment of candidates who must fulfill the following conditions:

- (a) Age : Between 21 and 25 years.
- (b) Academic Qualification : Secondary School Certificate Examination.
- (c) Other qualification : (i) Experience in detailed supervision over photographic materials and equipments.
- (ii) Knowledge of qualities of various types of photographic materials and equipments.
- (iii) Conversation with various specified photographic processes such as photographic documents with the use of transmitted light, Ultra Violet light and Infra-Red Films, Micro-photography, etc. and movie photography.”

8. Further, it would be also apposite to note the duties of Junior Finger Print Expert as well as of Searcher, which are as under :-

“५) क.तज्ञ सहा.पो.निरीक्षक (अंमु) पुणे, मुंबई, नागपूर व औरंगाबाद यांची अं.मु. केंद्रातील कर्तव्ये

- १) दस्तऐवज व चान्सप्रिंट केसेस बाबत पॅनलमध्ये मतप्रदर्शन करून आवश्यकतेप्रमाणे संबंधित प्रकरणात कोर्ट साक्ष देणे.
- २) तपासणीस यांनी केलेल्या कामकाजाचा मधील शिक्षाप्राप्त व मालमत्ता/ गंभीर गुन्हा मधील अंगुली मुद्रा पत्रिका यांची छाननी, वर्गीकरण याची पुनःतपासणी करून स्वाक्षरीसह मूळ अभिलेखावर ठेवणे.
- ४) अखिल भारतीय पोलिस कर्तव्य मेळावा अंगुलीमुद्रा केंद्रातील / केंद्रामार्फत प्रशिक्षण, व्याख्यान, कार्यशाळा इत्यादी कामकाजात सहाय्यक म्हणून कामकाज करणे.

- ५) अंगुली मुद्रा केंद्र अंतर्गत शाखा प्रमुखास सहाय्यक म्हणून काम करणे.
- ६) वरिष्ठ अधिकार्यांनी दिलेल्या आदेशानुसार इतर कामकाज करणे.
- ७) मुंबई येथील तज्ञ गुन्हे स्थळी भेट देऊन त्यांचे अंतिम अहवाल सादर करणे.
- ८) अन्य जिल्ह्यांमध्ये जर क तज्ञांची आवश्यकता भासल्यास संचालक / उपसंचालक यांचे आदेशाने प्रतिनियुक्तीवर कामकाज करणे.
- ६) तपा./ पो.उपनिरीक्षक (अंमु), पुणे, मुंबई, नागपूर व औरंगाबाद यांची केंद्रांमधील कर्तव्ये**
- १) परिक्षेत्रातील घटकांकडून प्राप्त होणार-या अटक आरोपीच्या अं.मु.पत्रिकांची भिलेखावर तपासणी करणे.
- २) परिक्षेत्रातील घटकांकडून प्राप्त होणाऱ्या शिक्षा प्राप्त व मालमत्ता / गंभीर गुन्ह्यांमध्ये अटक आरोपीच्या अंगुली मुद्रा पत्रिकांच्या वर्गीकरणाची पुनर्तपासणी करून स्वाक्षरीसह सदर अं.मु.पत्रिका अभिलेखावर ठेवणे कामी कार्यवाही करणे.
- ३) पुनःदोष सिद्धी पत्रिकेची मूळ अभिलेखावर नोंद घेणे.
- ४) अनोळखी मयत इसमांच्या एम.ओ.बी. फरारी व तडीपार गुन्हेगार इत्यादी बाबतीतील योग्य त्या नोंदी मूळ अभिलेखावर घेणे.
- ५) शाखाप्रमुख यांनी दिलेली कामे करणे.’’

9. Before going ahead, it is further necessary to see the definitions of Police Personnel, Specialized Agencies, which are as under.

“Police Personnel” is defined under Section 2(11A) of Maharashtra Police Act, which is as under :-

**“Police Personnel”** means any member of the Police Force appointed or deemed to be appointed under this Act.”

“Specialized Agencies” is defined in Section 2 (14A-1) of Maharashtra Police Act, which is as under :-

**“Specialized Agencies”** means Crime Investigation Department, State Intelligence Department, Protection of Civil Rights, Anti-Corruption Bureau, State Reserve Police Force, Anti-Terrorist Squad, Highway Traffic and Training Directorate”.

10. Whereas, as per Section 3 of Maharashtra Police Act, there shall be one Police Force for the whole State of Maharashtra and such Police Force shall include every Police Officer referred to in Clause 6 of Section 2. Section 2(6) of Maharashtra Police Act is as under :-

**“2(6)** “Director General and Inspector General”, “Additional Director General and Inspector General”, Special Inspector General”,

“Commissioner”, “Joint Commissioner”, “Additional Commissioner”, “Deputy Inspector General”, Deputy Commissioner”, Assistant Commissioner”, “Superintendent”, “Additional Superintendent”, “Assistant Superintendent”, “and “Deputy Superintendent” means respectively, the Director General and Inspector General of Police, Special Inspector General of Police, Commissioner of Police, Joint Commissioner of Police, Additional Commissioner of Police, Deputy Inspector General of Police (including the Director of Police Wireless and Deputy Inspector General of Police, Police Motor Transport appointed under section 8A), Deputy Commissioner of Police, Assistant Commissioner of Police, Superintendent of Police (including a Superintendent appointed under section 8A or 22A), Additional Superintendent of Police, Assistant Superintendent of Police and Deputy Superintendent of Police, appointed or deemed to be appointed under this Act.”

11. Thus, as per Section 2(11A), the Police Personnel means any member of the Police Force appointed or deemed to be appointed under Maharashtra Police Act. Whereas, the post of Junior Finger Print Expert / Researcher are filled in as per Clause 61 and 62 of Maharashtra Police Manual. Admittedly, till date, no Recruitment Rules are framed for these posts. The post of Researcher, Junior Finger Print Expert, etc. fall within the Ministerial Staff of Crime Investigation Department and their duties are restricted to the examination of document in question and to give opinion as explicit from the nature of duties and responsibilities referred to above. Suffice to say, it is explicit that in Crime Investigation Department, there is separate wing of Ministerial Staff (Technical Staff) for the examination of document in question. The mode of recruitment, promotion and nature of duties thus clearly exhibits that it is totally separate wing of Ministerial Staff and they cannot be mixed with Police Force or Police Personnel. In other words, it is separate cadre and their duties do not go beyond the examination of document in question. They are not included in the definition of “Police Personnel” which is defined under Section 2(11A) of Maharashtra Police Act. As stated above, the Police Personnel means member of Police Force appointed or deemed to be appointed under the provisions of Maharashtra Police Act. Whereas, the appointment of Researchers/Junior Finger Print Experts is made under Police Manual for ministerial work. Only because they are working in Crime Investigation Department, that itself does not mean



that for their transfer, it requires approval of PEB constituted for Specialized Agencies contemplated under Section 22J-3 read with Section 22J-4 of Maharashtra Police Act.

12. True, by G.R. dated 09.05.2000, the post of Junior Finger Print Expert is equated to the post of Assistant Police Inspector. However, it should not be forgotten that only nomenclature is given Junior Finger Print Expert/API for the purpose of pay parity and nothing else as evident from G.R. Therefore, the use of word 'Assistant Police Inspector' in G.R. dated 09.05.2000 cannot be construed to hold that such post falls within the definition of Police Personnel. There is material difference between Police Personnel and Ministerial Staff solely working for examination of document in the Department. They are not deployed on the field for investigation or to perform any other duties of Bandobast, law and order, which Police Personnel were required to perform.

13. Furthermore, as rightly pointed out by learned Presenting Officer undisputedly, for Junior Finger Print Expert, they have separate seniority list for promotion and regular Assistant Police Inspectors who are working in Police Force have their own separate seniority list. This aspect also reinforces the conclusion that their cadre is totally independent having nothing to do with the duties of regular Police Force or Police Inspector. Those who are working on the Ministerial Establishment like Searcher, Junior Finger Print Expert, Photographer, etc. are not required to undergo rigorous physical training alike regular Police Personnel. All these aspects invariably shows that though the nomenclature is Junior Finger Print Expert/API, it is only for pay parity equal to API and for no other purpose.

14. Legislature in it's wisdom has specifically excluded Searcher, Junior Finger Print Expert, etc. from the definition of "Police Personnel", which is defined under Section 2(11A) of Maharashtra Police Act. As such, what is excluded from definition cannot be included into it by any

stretch of imagination. It appears that it being totally separate and independent wing doing Ministerial or Technical work, the same is excluded from the definition of 'Police Personnel' having regard to nature of duties, source of recruitment and other allied aspects.

15. Now turning to the decision in O.A.No.345/2015, the perusal of decision reveals that the import and effect of Section 2(11A) of Maharashtra Police Act or nature and duties of Junior Finger Print Expert were not at all argued not considered by the Tribunal. Suffice to say, the view taken in O.A.385/2015 that transfers of Junior Finger Print Expert are governed by Maharashtra Police Act is incorrect and we hold that their transfers are governed by the provisions of 'Transfer Act 2005'.

16. In view of above, we answer the reference accordingly.

17. O.A.No.353/2020 now be listed before Single Bench for its disposal.

Sd/-  
**(A.P. KURHEKAR)**  
**Member-J**

Sd/-  
**(P.N. DIXIT)**  
**Vice-Chairman (A)**

Mumbai

Date : 23.02.2021

Dictation taken by :

S.K. Wamanse.

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