

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.392 OF 2024

**DISTRICT: PUNE
SUBJECT: TRANSFER**

Shri Vivek Vasantrao Mugalikar,)	
Age 56 years,)	
Working as Assistant Commissioner of Police)	
Pimpri Chinchwad Commissionerate)	
(presently Relieved))	
R/at: Queenstown Society B-904,)	
near Chinchwad Railway Station)	
Chinchwad, Pune – 411033)	... Applicant

Versus

- | | | |
|---|---|------------------------|
| 1) The State of Maharashtra |) | |
| Though 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 |) | |
| Commissionerate of Pimpri-Chinchwad |) | |
| Pune – 411 033 |) | |
| | | |
| 4) The Additional Chief Secretary |) | |
| And Chief Electoral Officer |) | |
| General Administration Department |) | |
| 5 th Floor, Mantralaya, Maharashtra State, |) | |
| Mumbai –400 032 |) | ... Respondents |

Smt. Punam Mahajan, learned Advocate for the Applicant.

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

CORAM : DEBASHISH CHAKRABARTY, MEMBER (A)

DATE : 09.09.2024

JUDGMENT

1. The Applicant who belongs to cadre of 'Dy SP/ACP' has invoked provisions of 'Section 19' of 'The 'Administrative Tribunals Act, 1985' to challenge his 'Mid Term' & Mid Tenure' transfer from post of 'ACP (Crime-1)' in establishment of 'Commissioner of Police, Pimpri Chinchwad' to post of 'SDPO Shrivardhan' in establishment of 'Superintendent of Police, Raigad' by 'Government Order' dated 28.02.2024 of 'Home Department'.

2. The learned Advocate for Applicant emphasized that Applicant has challenged 'Government Order' dated 28.02.2024 of 'Home Department' on grounds of misinterpretation of 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, as he was not required to be transferred from post of 'ACP (Crime-1)' in establishment of 'Commissioner of Police, Pimpri Chinchwad' since 'Crime Branch' is considered as 'Functional Department' and as Applicant had not completed 2 Years on this post as per provisions of 'Section 22 N(1)(a)' of 'The Maharashtra Police Act, 1951'.

3. The learned Advocate for Applicant mentioned that Applicant admits having completed 3 Years during last 4 Years in 'Pune District' but refutes that he was serving in 'Home District'.

4. The learned Advocate for Applicant asserted that Applicant in obedience of 'Government Order dated 28.02.2024' of 'Home Department' had forthwith joined on post of 'SDPO Shrivardhan' in

establishment of 'Superintendent of Police, Raigad' and thereupon sincerely discharged duties and responsibilities relating to conduct of 'General Elections Lok Sabha: 2024'; and those assigned by rules & regulations formulated under 'The Maharashtra Police Act 1951'.

5. The learned Advocate for Applicant then stated that Applicant has 'Personal Hardships' and is due to retire on 30.06.2025. Hence, for these reasons Applicant has requested to be transferred back to post of 'ACP (Crime-1)' in establishment of 'Commissioner of Police Pimpri Chinchwad'.

6. The learned PO relied on 'Affidavit-in-Reply' filed on 12.06.2024 on behalf of Home Department to contend that Applicant had completed 'Normal Tenure' of 'Two Years' at 'one place of posting' as per entitlement under 'Section 22 N(1)(a)' of 'The Maharashtra Police Act 1951'. The Applicant had in fact completed 5 Years and 6 Months at 'one place of posting' under 'Commissioner of Police, Pimpri Chinchwad'.

7. The learned PO emphasized based on 'Affidavit-in-Reply' filed on 12.06.2024 on behalf of Home Department that Applicant has been transferred as per directions in Election Commission of India letter dated 21.12.2023 through exercise of 'Statutory Powers' under 'Section 22N(2)' of 'The Maharashtra Police Act 1951'.

8. The learned PO further drew attention to the '**Judgment' dated 10.03.2022 in Civil Appeal No. 1243 of 2022 (S.K. Nausad Rahman & Ors. Vs. Union of India & Ors.** to stress that "... executive instructions and administrative directions concerning transfers and postings do not confer and indefeasible right to claim a transfer or posting. Individual convenience of persons who are employed in the service is subject to the overarching needs of the administration."

9. The Applicant was promoted to rank of 'Dy SP/ACP' on 13.10.2023 and thereupon was successively posted as (a) 'ACP Bhosari MIDC Division' on 03.11.2023 and (b) 'ACP (Crime-1)' on 16.01.2024 by 'Commissioner of Police Pimpri Chinchwad'. The Applicant as 'Dy SP/ACP' had thus served in establishment of 'Commissioner of Police, Pimpri Chinchwad' for just few months until his 'Mid Term' & 'Mid Tenure' transfer to post of 'SDPO, Shrivardhan' in establishment of 'Superintendent of Police, Raigad' by 'Government Order' dated 28.02.2024 of 'Home Department'.

10. The Applicant though not serving in 'Home District' had undoubtedly served long consecutive tenures as 'Police Inspector' in 'Pune District' viz (a) 06.06.2015 to 14.08.2018 in establishment of 'Commissioner of Police, Pune' and (b) 15.08.2018 to 13.10.2023 in establishment of 'Commissioner of Police, Pimpri Chinchwad'. So, Applicant fulfilled the principal criteria for transfer of 'Police Personnel' having completed more than 3 Years during last 4 Years within 'Revenue District' as even promotion to any post within 'Revenue District' was required to be counted towards aggregation of tenures as per 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.

11. The Applicant had during course of hearing submitted representation to 'DGP, Maharashtra State' on 16.06.2024 requesting to be transferred back to post of 'ACP (Crime-1)' in establishment of 'Commissioner of Police, Pimpri Chinchwad' on grounds of 'Personal Hardships' and for reason of 'Superannuation' on 30.06.2025. The 'Home Department' was thus directed to consider the representation submitted by Applicant to 'DGP Maharashtra State' on 16.06.2024. Accordingly, 'PEB-1' in its meeting held on 01.08.2024 did consider the representation submitted by Applicant on 16.06.2024 but rejected it for

reasons recorded in 'Minutes of Meeting'. The extracts of 'Minutes of Meeting' of 'PEB-1' held on 01.08.2024 read as follows:-

“4. भारतीय निवडणुक आयोगाचे २१.१२.२०२३ चे निर्देशानुसार व मुख्य निवडणुक अधिकारी, महाराष्ट्र राज्य, यांचे दिनांक २२.०२.२०२४ चे पत्रामधील निर्देशानुसार त्यांनी मागील ४ वर्षात ३ वर्ष पुणे महसुल जिल्ह्यात पुर्ण केल्यामुळे त्यांना पुणे महसुल जिल्ह्याबाहेर बदली करणे आवश्यक होते. त्यामुळे पुणे महसुल जिल्ह्याबाहेर बदलीसाठी त्यांची पसंतीचे ठिकाणी मागविण्यात आली होती. त्यांनी १. दहशतवाद विरोधी पथक २. ठाणे शहर, ३. वसमत जि.हिंगोली, ४. श्रीवर्धन जि. रायगड ही पसंतीची ठिकाणे दिली होती.त्यानंतर पोलीस आस्थापना मंडळ क्र. १ ह्यांनी त्यांना २२(एन)(२) महाराष्ट्र पोलीस कायदा १९५१ अन्वये दिलेल्या अधिकाराचा वापर करून, अपवादात्मक परिस्थिती, लोकहित व प्रशासकीय निकड या बाबी लक्षात घेऊन त्यांची बदली उप विभागीय पोलीस अधिकारी, श्रीवर्धन या ठिकाणी प्रस्तावीत करण्यात आलेली होती आणि त्यानंतर शासनाचे दिनांक २८.०२.२०२४ चे आदेशानुसार तसेच मा.मुख्य निवडणुक अधिकारी महाराष्ट्र राज्य यांचेशी विचार विनिमय करून त्यांची बदली उप विभागीय पोलीस अधिकारी श्रीवर्धन उपविभाग ह्या ठिकाणी करण्यांत आलेली आहे.

५. तसेच आगामी काळात महाराष्ट्रात विधानसभा निवडणुक होणार आहे. त्याबद्दल भारतीय निवडणुक आयोगाचे दिनांक ३१.०७.२०२४ रोजीचे पत्र प्राप्त झालेले आहे (प्रत संलग्न). त्याअनुषंगाने, असे अधिकारी ज्यांचा निवडणुकीशी प्रत्यक्ष संबंध येत असेल आणि ज्यांना एका महसुली जिल्ह्यात मागील ४ वर्षात ३ वर्ष (दि. ०१.११.२०२० ते दि. ३१.१०.२०२४ पर्यंत) पुर्ण झालेली असल्याने, त्यांची पदस्थापना महसुल जिल्ह्याच्या बाहेर करणे अभिप्राय आहे.

६. वरील परिस्थिती विचारात घेता, पोलीस आस्थापना मंडळ क्र. १, यांना महाराष्ट्र पोलीस कायदा १९५१ मधील कलम २२(न)(२) नुसार प्रदान करण्यांत आलेल्या अधिकाराचा वापर करून, श्री. विवेक वसंतराव मुगळीकर ह्याची दिनांक १६.०६.२०२४ रोजीचे अर्जानुसार त्यांची सहाय्यक पोलीस आयुक्त, पिंपरी चिंचवड ह्या पदावर बदली करण्याची विनंती अमान्य करण्याची शिफारस करण्यात येत आहे.”

The 'PEB – 1' in its meeting held on 01.08.2024 thus has rejected the representation submitted by Applicant on 16.06.2024 with reasons anchored around the fact that post of 'SDPO, Shriwardhan' was the '4th Option' given by Applicant when he was found eligible to be transferred prior to 'General Elections Lok Sabha 2024' and because fresh restrictions have now been enforced by Election Commission of India letter dated 31.07.2024 for ensuing 'General Elections Maharashtra Legislative Assembly 2024'.

12. The 'Judgment' passed on 19.07.2024 in 'Groups of O.A. No.260/2024 & Ors. relating to PI's; API; PSI records elaborate findings with respect to implementation of 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 in the context of the provisions of 'Section 28- A' of 'The

Representation of Peoples Act, 1951' and its interface with provisions of law under 'Section 22N(1)' and 'Section 22N(2)' of 'The Maharashtra Police Act 1951'.

13. The 'Judgment' passed on 19.07.2024 in 'Groups of O.A. No. 260/2024 & Ors.' is required to be referred to and contents of 'Para 8' to 'Para 11'; 'Para 14' & 'Para 21' are necessary to reproduce for contextual clarity about case of Applicant who belongs to cadre of 'Dy SP/ACP' and was serving on post of 'ACP (Crime-1)' in establishment of 'Commissioner of Police, Pimpri Chichwad' when he came to be transferred 'Mid Term' & 'Mid Tenure' to post of 'SDPO, Shrivardhan' in establishment of 'Superintendent of Police, Raigad' by 'Government Order' dated 28.02.2024 of 'Home Department'. The contents of 'Para 8' to 'Para 11'; 'Para 14' & 'Para 21' of the 'Judgment' passed on 19.07.2024 in 'Groups of O.A. No. 260/2024 & Ors.' reads as follows:-

"8. The 'Mid-Term' & 'Mid-Tenure' transfers of 'Police Personnel' in rank of 'P.I., A.P.I. & P.S.I.' were effected as per directions in (a) Election Commission of India letter dated 21.12.2023 (b) Election Commission of India letter dated 19.01.2024 (c) Election Commission of India letter dated 24.01.2024 considering importance of ensuring 'Free and Fair' conduct of 'General Elections Lok Sabha: 2024'. Now as 'General Elections Lok Sabha: 2024' are over the challenge to 'Transfer Orders' by Applicants who are 'Police Personnel' in ranks of 'P.I., A.P.I. & P.S.I.' have to be decided based on specificity of criteria laid down by law as encapsulated under 'Section 22N(1)' of 'The Maharashtra Police Act, 1951' which in turn not only has foundations in assurance to 'Police Personnel' of 'Normal Tenure' on any particular 'Post' which is defined in 'Section 2(11B)' of 'The Maharashtra Police Act 1951' but also stands interwoven around the rank held by such 'Police Personnel' and category of 'Police Establishment' viz (i)'Commissioner of Police' or (ii)'Superintendent of Police' or (iii) 'Specialized Agency'.

9. The extant provisions of 'Section 22N(1)' of 'The Maharashtra Police Act, 1951' does not include any restrictive criteria including of 'Home District' which makes 'Police Personnel' ineligible to hold any particular 'Post' in 'Police Establishments' located in their 'Home District'; although it came to be widely invoked to effect large scale 'Mid- Term' & 'Mid-Tenure' transfer of 'Police Personnel' in ranks of 'P.I., A.P.I. & P.S.I.' as per directions in (a) Election Commission of India letter dated 21.12.2023 (b) Election Commission of India letter dated 18.01.2024 (c) Election Commission of India letter dated 24.01.2024.

10. The 'Statutory Powers' vested under 'Section 22C' to 'Section 22J- 4' of 'The Maharashtra Police Act, 1951' were indeed invoked as 'Transfer Orders' of 'Police Personnel' in ranks of 'P.I., A.P.I. & P.S.I.' were undoubtedly issued based on recommendations made by 'P.E.B.- I' or 'P.E.B. - II' or 'P.E.B.'s' at level of (i) 'Commissioners of Police' or (ii) 'Special I.G.Ps.' and (iii) 'Superintendents of Police' and with approval of respective 'Competent Authority' under 'Section 22N(1)' of 'The Maharashtra Police Act, 1951' but as elucidated above the large scale 'Mid-Term' & 'Mid-Tenure' transfer of 'Police Personnel' in ranks of 'P.I., A.P.I. & P.S.I.' did not achieve perceptible degree of congruity with extant provisions of 'Section 22N(1)' of 'The Maharashtra Police Act 1951'.

11. The 'Section 22N(1)' of 'The Maharashtra Police Act 1951' allows aggregation of tenures of 'Police Personnel' in ranks of 'P.I. A.P.I. & P.S.I.' upto '4 Years' at 'District Level' and upto '8 Years' at 'Range Level' and '6 Years' or '8 Years' in establishments of 'Commissioners of Police' alongwith an assurance of 'Normal Tenures' on any particular 'Post' as specified under 'Section 22N(1)' of 'The Maharashtra Police Act, 1951'; notwithstanding the fact that 'Police Personnel' can still be transferred under its 'Proviso Clause' by the 'State Government' or in 'Exceptional Cases' either in 'Public Interest' or on account of 'Administrative Exigencies' by 'Competent Authority' as designated under 'Section 22N(2)' of 'The Maharashtra Police Act, 1951'. The provisions of law do not envisage universal curtailment of 'Normal Tenures' under 'Section 22 (N)(2)'. Further an eventuality which may arise only once in 5 Years during elections conducted by 'Election Commission of India' or 'State Election Commission' cannot be construed as 'Exceptional Cases'. Such large scale 'Med-Term' and 'Mid-Tenure' transfers of 'Police Personnel' in ranks of 'P.I. A.P.I. & P.S.I.' on grounds of serving in 'Home Districts' and / or on completion of tenures of '3 Years' during last '4 Years' in any 'Revenue District'; therefore become rather vulnerable as on one hand ineligibility to hold any post in 'Home District' is not envisaged by law, while on other hand law does allow aggregations of tenures upto '4 Years' at 'District Level' and upto '8 Years' at 'Range Level' and '6 Years' or '8 Years' in establishments of 'Commissioners of Police'. Therefore such 'Transfer Orders' of 'Police Personnel' in rank of 'P.I., A.P.I. & P.S.I.' must to be held to be perishable since they cannot have lasting effect even after conduct of elections by 'Election Commission of India' or 'State Election Commission'. The 'Transfer Orders' of 'Police Personnel' in ranks of 'P.I., A.P.I & P.S.I' which are effected only to ensure 'Free and Fair' conduct of elections by 'Election Commission of India' or 'State Election Commission' if allowed to survive would contribute to flagrant impermissible contravention of law under 'The Maharashtra Police Act, 1951'.

14. The 'Mid-Term' & 'Mid-Tenure' transfers of 'Police Personnel' under 'Section 6(2B)' thus necessitates fulfillment of atleast one of the reasons referred to in 'Proviso Clause' of 'Section 22(N)(1)' or any of those in 'Section 22N(2)'. However, pertinent to note is that 'Section 22N(2)' is applicable only to 'Exceptional Cases'. Thus 'Section 22N(2)' cannot be extrapolated to effect large scale 'Mid-Term' & 'Mid-Tenure' transfers of 'Police Personnel' on grounds which are not 'intra legem' such as (a) Serving in 'Home District' and / or (b) Completion of '3 Years' tenure during last '4 Years' in 'Revenue District'. Further, 'Exceptional Cases' under 'Section 22N(2)' must be understood as those which require exceptions to be made to what is provided in law and not be liberally interpreted as exceptions which can even be made to what is extraneous to law. Further it would be pertinent to not overlook the fact that

though 'Section 22(N)(1)' and 'Section 22(N)(2)' exist independently these reside amicably under 'The Maharashtra Police Act, 1951'.

21. The 'Notification' if any under 'Section 28-A' of 'The Representation of People's Act, 1951 in respect of 'Police Personnel' in ranks of 'P.I., A.P.I. & P.S.I.' has ceased to have effect upon completion of 'General Elections: Lok Sabha 2024'. So also the period of 'Deemed Deputation' to 'Election Commission of India' of such 'Police Personnel' is now over and they are now reverted back automatically to their respective 'Police Establishments'. Hence, 'Transfer Orders' of (i) D.G.P. Maharashtra State dated 30.01.2024 of 'P.I.' (ii) 'D.G.P. Transfer Order dated 20.02.2024, 24.02.2024 and 26.02.2024 of 'A.P.I. & P.S.I.' as well as those issued by (a) 'Special I.G.P Kolhapur Range (b) 'S.P. Pune, (Rural) (c) 'S.P. Satara for reasons elaborated above do not pass 'Testum Lex'. Only conclusion that can be arrived at is that Applicants who are 'Police Personnel' in ranks of 'P.I., A.P.I. & P.S.I.' are now required to be reposted back to their earlier 'Police Establishments' from where they were transferred just prior to 'General Elections Lok Sabha: 2024' based on criteria extrinsic to law such as 'Serving in Home Districts'. Further those Applicants who were not 'Serving in Home District' and had not just not completed 'Normal Tenure' of '2 Years' or '3 Years' on any 'Post' but even had not completed '4 Years' at 'District Level' or '8 Years' at 'Range Level' or '6 Years' or '8 Years' in establishment of 'Commissioner of Police' but yet were transferred because they had completed aggregated tenure '3 Years' during last '4 Years' in 'Revenue District'; are also required to be reposted back to their earlier 'Police Establishments' of Judgment dated 19.07.2024 passed in group of O.A. No. 260/2024 & Ors.,"

14. The 'Judgment' passed on 19.07.2024 in Group of O.A. No. 260/2024 & Ors. relating to PI; API; PSI redeems supremacy of 'The Maharashtra Police Act 1951' which is the 'State Legislation' to regulate in perpetuity all matters of 'Transfers & Postings' of 'Police Personnel'. Hence for reasons mentioned above; the essence of 'Judgment' passed on 19.07.2024 in Group of O.A. No. 260/2024 & Ors. relating to PI; API; PSI is equally apposite to case of Applicant who belongs to higher cadre of 'Dy SP/ACP'.

15. The Applicant had displayed obedience as expected of any 'Police Personnel' towards directions given by 'Government Order' dated 28.02.2024 of 'Home Department' and forthwith joined on post of 'SDPO, Shrivardhan' in establishment of 'Superintendent of Police, Raigad'. The conduct of Applicant however should not to be understood as quite acquiescence to transient 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 as these were destined for cessation upon completion of 'General Election Lok Sabha 2024'. The request of Applicant must thus be viewed with fairness from the perspective of it being an open expression of fidelity towards the larger cause of seeking upholding of 'Legal Rights' which have been granted to all 'Police Personnel' under 'Section 22N(1)' and outcome of natural expectation of equity & objectivity in collective decisions of 'PEB-1' as per 'Sui-Generis' provisions of 'Section 22 K' of 'Maharashtra Police Act 1951'.

16. The 'Additional Chief Secretary Home Department' is thus informed to again review decision taken in case of Applicant by 'PEB-1' in its meeting held on 01.08.2024 as provisions of 'Section 22N(1)' of 'The Maharashtra Police Act 1951' provides 'Normal Tenure' of 'Two Years' to 'Dy SP/ACP' at 'one place of posting' which has been insightfully explained by **Hon'ble Bombay High Court through its (a) Judgment dated 01.09.2021 in Writ Petition No. 9984/2019 [State of Maharashtra & Anr. Vs. Anuradha S. Dhumal & Ors.] and (b) 'Judgment' dated 22.12.2018 in Writ Petition No. 5320/2018 [Ashok S/o Rangnath Barde Vs. State of Maharashtra & Ors.]** The 'PEB-1' while reviewing afresh the case of Applicant must refer to all recommendations it had made earlier at time of large scale transfers of 'Dy SP/ACP' including those on requests when stand effected by Government Order dated 03.07.2024 of Home Department; so as to obliterate any scope for invidious discrimination against the Applicant.

17. The directions in Election Commission of India dated 31.07.2024 made applicable for ensuing 'General Election Maharashtra Assembly Elections 2024' may also be factored in by 'PEB-1'; if Applicant who is from cadre 'Dy SP/ ACP' was to be recommended upon fresh review for transfer to establishment of either (a) 'Commissioner of Police, Pimpri Chinchwad' or (b) Commissioner of Police, Pune on any available post in

‘Functional Department’ which have been classified by ‘Home Department Circular dated 16.02.2009’.

18. The meeting of ‘PEB-1’ must be held by ‘Additional Chief Secretary, Home Department’ within ‘Two Weeks’ to review afresh the case of Applicant and thereupon appropriate decision to transfer him on any post of Dy SP/ACP in ‘Functional Department’ in above mentioned ‘Police Establishments’ of ‘Pune District’ be taken expeditiously by ‘Competent Authority’ designated under ‘Section 22 N(2)’ of ‘The Maharashtra Police Act 1951’.

ORDER

- (i) The Original Application No. 392 of 2024 is Partly Allowed.
- (ii) No Order as to Costs.

Sd/-
(Debashish Chakrabarty)
Member (A)

Place: Mumbai
Date: 09.09.2024
Dictation taken by: A.G. Rajeshirke.

Uploaded on: _____