

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8437 OF 2017**

The Addl. Chief Secretary, Home Department & Anr.	... Petitioners
Vs.	
Shri. Arun Ramchandra Pawar	... Respondent

ALONGWITH

WRIT PETITION NO.8438 OF 2017

The Addl. Chief Secretary, Home Department & Anr.	... Petitioners
Vs.	
Shri. Shrikant Shasimohan Khot	... Respondent

Mr.P.G. Sawant, AGP for the Petitioners in both Petitions.
Mr.Sanjay Kshirsagar for Respondent No.1.

**CORAM : A.S. OKA &
M.S.SONAK, JJ.**

DATE : 5th SEPTEMBER, 2018

P.C.

1 Heard learned Advocate General and the learned counsel appearing for the Respondents in both the Writ Petitions.

2 The challenge in this Writ Petitions is to the common judgment and order dated 12th July 2016 passed by the learned Member-Judicial of the Maharashtra Administrative Tribunal (for short, “the said

Tribunal”) on the original applications filed by the Respondents in these two Writ Petitions. By filing the original applications, the Respondents impugned their orders of transfer. In fact, their order of transfer is the same which is dated 24th May 2016 issued under the signature of the Director General of Police, Maharashtra State. The said order specifically notes that the transfers have been made in exercise of powers under sub-section (2) of Section 22N of the Maharashtra Police Act, 1951 (for short “the said Act”). It specifically records that by exercising the power under sub-section (2) of Section 22N of the said Act, the persons named in the said order have been transferred. The name of the Respondent in Writ Petition No.8437 of 2017 appears at Serial No.63 who was Inspector of Police posted at Kolhapur. He was transferred to Nagpur. The name of the Respondent in Writ Petition No.8438 of 2017 appears at Serial No.32. He was Inspector of Police under Pune Rural. The order dated 24th May 2016 specifically notes that the cases of the Officers mentioned therein were exceptional cases and, therefore, they are being transferred in public interest and on account of administrative exigencies by the Police Establishment Board No.2 (for short “the said Board”).

3 In the written statements filed to both the original applications challenging the said order dated 24th May 2016, the Petitioners took a

specific stand that the orders of transfer which are impugned in original applications were under sub-section (2) of Section 22N of the said Act. The original applications have been allowed by the impugned judgment and order by setting aside the orders of transfer of the Respondents. Even Review Petitions preferred by the Petitioners have been dismissed. In the Review Petitions, specific contention has been raised that the orders of transfer have been made by the said Board in exercise of the powers under sub-section (2) of Section 22N of the said Act.

4 The submission of the learned AGP is that there were specific reports submitted by the superior officers of the Respondents which were placed before the said Board. Inviting our attention to the findings recorded by the Tribunal, he submitted that firstly sub-sections (1) and (2) of Section 22N of the said Act have not been quoted correctly. Secondly, the Tribunal proceeded on erroneous basis that the power of transfer could not have been exercised by the said Board as the Proviso to sub-section (2) specifically records that in case of serious complaints, irregularity, law and order problem, only the competent authority can make order of transfer. His submission is that the order of transfer shows that the same was in exercise of powers under sub-section (2) of Section 22N of the said Act. He, therefore, submitted that the Tribunal has committed grave error by recording a finding that

the powers could have been exercised only by the State Government. He submitted that criticism made by the learned Member of the Tribunal of the said Board is erroneous inasmuch as that the Board may not have recorded reasons or satisfaction, but the reports of the superior officers of the Respondents making out a case for transfer in exercise of sub-section (2) of Section 22N of the said Act were before the said Board. He would, therefore, submit that interference by this Court with the impugned order is necessary. The learned counsel appearing for the Respondents supported the impugned order.

5 We have carefully considered the submissions. We have perused the impugned order of transfer dated 24th May 2016. The impugned order specifically notes that the orders of transfer which are impugned before the Tribunal are made by the said Board in public interest and on account of administrative exigencies. In the written statements filed by the Petitioners before the Tribunal, it is their specific case that the impugned orders of transfer have been made by the said Board. Moreover, that was the specific case made out by the Petitioners in Review Petitions before the Tribunal. It is, therefore, necessary to make a reference of Section 22N of the said Act as it stood on 24th May 2016. Section 22(N) reads thus :

22N. Normal tenure of Police Personnel, and Competent Authority : (1) Police Officers in the police force shall have a normal tenure as mentioned below, subject to the promotion or superannuation :-

(a) for Police Personnel of and above the rank of Deputy Superintendent of Police or Assistant Commissioner of Police a normal tenure shall be of two years at one place of posting;

(b) for Police Constabulary a normal tenure shall be of five years at one place of posting;

(c) for Police Officers of the rank of Police Sub-Inspector, Assistant Police Inspector and Police Inspector a normal tenure shall be of two years at a Police Station or Branch, four years in a District and eight years in a Range, however, for the Local Crime Branch and Special Branch in a District and the Crime Branch and Special Branch in a Commissionerate, a normal tenure shall be of three years;

(d) for Police Officers of the rank of Police Sub-Inspector, Assistant Police Inspector and Police Inspector a normal tenure shall be of six years at Commissionerates other than Mumbai, and eight years at Mumbai Commissionerate;

(e) for Police Officers of the rank of Police Sub-Inspector, Assistant Police Inspector and Police Inspector in Specialized Agencies a normal tenure shall be of three years.

The Competent Authority for the general transfer shall be as follows, namely :-

Police Personnel		Competent Authority	
(a)	Officers of the Indian Police Service	Chief Minister	
(b)	Maharashtra Police Service Officers of and above the rank of Deputy Superintendent of Police	Home Minister.	
(c)	Officers upto Police Inspector	(a)	Policed Establishment Board No.2.
		(b)	Police Establishment Board at Range Level
		(c)	Police Establishment Board at Commissionerate Level;

		(d)	Police Establishment Board at District Level
		(e)	Police Establishment Board at the Level of Specialized Agency.]

Provided that, the State Government may transfer any Police Personnel prior to the completion of his normal tenure, if, -

- (a) disciplinary proceedings are instituted or contemplated against the Police Personnel; or
- (b) the Police Personnel is convicted by a court of law; or
- (c) there are allegations of corruption against the Police Personnel; or
- (d) the Police Personnel is otherwise incapacitated from discharging his responsibility; or
- (e) the Police Personnel is guilty of dereliction of duty.

(2) In addition to the grounds mentioned in sub-section (1), in exceptional cases, in public interest and on account of administrative exigencies, the competent Authority shall make mid-term transfer of any Police Personnel of the Police Force;

[Explanation – For the purposes of this sub-section, the expression “Competent Authority” shall mean :-

Police Personnel		Competent Authority
(a)	Officers of the Indian Police Service	Chief Minister
(b)	Maharashtra Police Service Officers of and above the rank of Deputy Superintendent of Police	Home Minister.
(c)	Police Personnel upto the rank of Police Inspector for transfer out of the respective Range or Commissionerate or Specialized Agency	Police Establishment Board No.2;

(d)	Police Personnel upto the rank of Police Inspector for transfer within the respective Range, Commissionerate or Specialized Agency	Police Establishment Boards at the Level of Range, Commissionerate or Specialized Agency, as the case may be;
(e)	Police Personnel upto the rank of Police Inspector for transfer within the District	Police Establishment Board at District Level:

Provided that, in case of any serious complaint, irregularity, law and order problem the highest Competent Authority can make the transfer of any Police Personnel without any recommendation of the concerned Police Establishment Board.

6 Sub-section (1) of Section 22N deals with the normal tenure of police personnel and general transfer of police personnel after expiry of the normal tenure. The Competent Authorities for general transfer are named in sub-section (1) of Section 22N. Proviso to sub-section (1) enables the State Government to transfer any police personnel prior to completion of his normal tenure on grounds specified in clauses (a) to (e) of the Proviso.

7 In addition to powers mentioned in sub-section (1), there is a power of transfer vesting under sub-section (2) which has to be exercised only in exceptional cases in public interest and on account of administrative exigencies. Power under sub-section (2) has to be exercised by the Competent Authority. Going by the Explanation to sub-section (2), Competent Authority for sub-section (2) is different from the Competent Authority named in sub-section (1).

8 In the present case, both the Respondents are Officers of the rank of Police Inspector and therefore as per Explanation to sub-section (2) of Section 22N of the said Act, the said Board is the Competent Authority. Therefore, to that extent, the learned AGP was right in offering criticism in relation to finding of the Tribunal that the power under sub-section (2) ought to have been examined by the State Government and not by the Competent Authority. However, there is a specific finding recorded by the Tribunal about the decision making process adopted by the said Board. To avoid any controversy, we called upon the learned AGP to produce copies of the relevant Minutes of Meeting of the said Board. Accordingly, the learned AGP has produced for perusal of the Court Minutes of the Meeting of the said Board held on 24th May 2016. The Minutes bear signatures of six out of seven members of the said Board. The Title of the Minutes is “Transfers on the basis of adverse reports”. The Minutes contain names of large number of Officers (about 70), their present postings and their proposed postings. The Minutes do not record that the cases of the Officers named therein are exceptional cases or that the cases of the said Officers fall in the category covered by sub-section (2) of Section 22N in the sense that their cases are exceptional and therefore in public interest and on account of administrative exigencies, the Competent Authority has recommended transfers. In fact, in the Minutes, except

the names of the officers, their place of original postings and place of proposed postings, nothing has been mentioned. We are conscious of the fact that it was not necessary for the Board to record elaborate reasons about each and every candidate. However, the Minutes do not show application of mind. The Minutes do not record satisfaction of the members of the Board that the cases of 70 Officers mentioned in the Minutes are exceptional cases inasmuch mid-term transfer were warranted in public interest and on account of administrative exigencies. There is nothing placed on record to show that any such satisfaction about the existence of the factors specified in sub-section (2) of Section 22N has been recorded by the said Board. Recording of such satisfaction is a condition precedent for passing a valid order of transfer under sub-section (2) of Section 22N of the said Act. Sub-section (2) is an exception to sub-section (1) which permits transfer only on the completion of the prescribed tenure.

9 Nothing is placed on record by the Petitioners to show that there was valid and lawful exercise of power by the Competent Authority (the said Board) under sub-section (2) of Section 22N of the said Act. Therefore, it is not necessary for us to consider the legal effect of the fact that one of the 7 members of the Board was not present in the meeting.

10 The other argument of the Respondent appears to be that when allegation is of serious complaint, in view of proviso to sub-section (2) of Section 22N, the power of transfer can be exercised only by the highest Competent Authority. It is not necessary to deal with the said case as we have proceeded on the basis of case made out by the Petitioners that the exercise of power was under sub-section (2) of Section 22N and cases of the Respondents fall under the category of exceptional cases which warranted mid-term transfer in public interest and on account of administrative exigencies.

11 Therefore, though some of the findings recorded by the Tribunal may not be correct, the ultimate order passed by the Tribunal is absolutely correct. It calls for no interference.

12 Hence, no case is made out for interference with the impugned orders. Therefore, Writ Petitions are rejected.

(M.S.SONAK, J)

(A.S. OKA, J)