

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 337 OF 2019
DISTRICT : BEED**

Namdeo s/o Dagdu Londhe,)
Age : 53 years, Occu. : Service,)
Posting at Police Station Amalner,)
R/o : House No. A-4, Police Colony,)
Ashti, Tq. Ashti, Dist. Beed.)

.. **APPLICANT**

V E R S U S

1. **State of Maharashtra,**)
Through it's Secretary, to the Government)
of Maharashtra, Home Department,)
Mantralaya, Mumbai-32, Maharashtra.)
2. **Director General Of Police,**)
Maharashtra State-Mumbai, Shahid)
Bhagatsingh Marg, Kulaba-Mumbai.)
3. **The Special Inspector General of Police,))
Aurangabad Circle, Aurangabad,)
Office of I.G. Aurangabad.)**
4. **The Superintendent of Police Beed,))
District Beed, Office of S.P. Beed.)**
5. **Enquiry Officer Home Dy. S.P. Office))
Of Superintendent of Police District Beed.)**

.. **RESPONDENTS**

APPEARANCE : Shri O.Y. Kashid, Advocate for the Applicant.

: Shri I.S. Thorat, P.O. for the Respondents.

CORAM : **Shri V.D. Dongre, Member (J)**
and
Shri Bijay Kumar, Member (A)

Reserved on : **29.11.2022**

Pronounced on : **10.01.2023**

ORDER**(Per : Shri Bijay Kumar, Member (A))**

1. This Original Application has been filed by the applicant on 19.04.2019 invoking provisions of Section 19 of the Administrative Tribunals Act, 1985, thereby, challenging the impugned order dated 28.05.2018 passed by the respondent No. 4 i.e. the Superintendent of Police, District- Beed by which the applicant had been removed from the service by way of punishment for misconduct. The applicant is also aggrieved by the orders dated 05.10.2018 passed by respondent no. 3 in appeal against the impugned punishment order, thereby, dismissing the appeal and the order dated 14.06.2019 passed by respondent no. 2 rejecting the revision petition filed by the applicant.

2. At a later stage, the applicant had filed a Miscellaneous Application No. 21/2022 on 10.01.2022 whereby grant of leave for adding additional grounds in terms of a new para no. K-1 and an additional Prayer Clause 2-A was prayed for. The said Miscellaneous Application was allowed by this Tribunal vide its oral order dated 24.01.2022.

3. In this matter, the applicant joined services of Beed District Police as a constable on his appointment by respondent No. 3 on

14.02.1988, rose to the rank of Police Naik in the year 2003 and thereafter, he was promoted to the rank of Head Constable in due course. In the present original application, the applicant has first mentioned some details of his postings including the posting at Police Station Ambhora in the year 2011 during which he was assigned Beat duty at Sayyad Amil Loni. Applicant's residential village Solapurwadi comes under the same Beat. In the year 2016 the applicant was transferred from police station Ambhora to police station Ambadner. Around the period of 2015 to 2019 the main events occurred which have bearing on the present matter, as narrated by the applicant in his application, a gist of which is being mentioned in following paras due to relevance.

(a) The applicant has stated in para 3 and 4 of O.A. (page 5-6 of paper-book) that he has had strained relationship with his wife Mrs. Lilawati who had attempted to commit suicide in the year 1997-98 after which she was admitted in the Government Hospital. The relationship between them continued to be strained which culminated in applicant's wife filing a complaint against him on 02.07.2016 before the District Superintendent of Police, Beed. The gist of the complaint is that she was meeting expenses of her family comprising of a divorced and a deserted daughter, two

unmarried daughters and a son as the applicant had abandoned her and his family. She further stated that she had to meet her expenses from the income generated by cultivating 3 acres of encroached grazing land on survey no. 10 in the village Solapurwadi and the applicant was compelling her to vacate the encroached piece of grazing land.

(b) The applicant has further mentioned in the original application that one Shri Bapu Kisan Khude, R/o Solapurwadi had filed a complaint against the applicant on 16.09.2015 alleging that the applicant was forcing him and other people belonging to backward class and scheduled tribe, who had been cultivating encroached grazing land in the village Solapurwadi, to vacate a piece of land admeasuring about 10 acres encroached by them for cultivation by the applicant. The applicant has further stated that the complainant Shri Bapu Kisan Khude had also alleged that the applicant was threatening to implicate them in false cases and kill them, being a police officer at Ambhora police station. A copy of the said complaint is enclosed as Annexure A-5 (page 53 of paper-book) plain reading of which shows that the complainant had endorsed

a copy of his complaint not only to the Chief Minister and senior officers of Aurangabad division and Beed district but to all newspapers for publicity which in Marathi reads as-
“सर्व वृत्तपत्र व दैनिक यांना प्रसिध्दीसाठी”.

(c) Similar complaints were received by Ambhora police station from other villagers too. It is admittedly that the three complaints were enquired into by officers from police station Ashti and Ambhora respectively and each time the applicant was given only advisory letter.

(d) Later on, Assistant police Inspector Ambhora submitted a report in respect of complaints against the applicant vide his report no. 1815/2017, dated- 10.10.2017 to the Superintendent of Police, Beed through Sub-divisional Police Officer, Ashti; based on which the Superintendent of Police, Ashti placed the applicant under suspension vide order dated 13.10.2017 exercising powers vested in him under Maharashtra Police Act, 1951, section 25 (2) and rule 3 (1a) (a) of Bombay Police (Punishment & Appeal) Rules, 1956. He further ordered preliminary enquiry by the sub-divisional police officer, Ashti vide his confidential communication dated 12.10.2017. The

applicant was given personal hearing on 31.10.2017 during preliminary enquiry.

(e) Thereafter, the Superintendent of Police, Beed had, in exercise of powers vested in him under Maharashtra Police Act, 1951, section 26, ordered a departmental enquiry against the applicant. The Deputy Superintendent of Police (Home) Beed was appointed as Departmental Enquiry Officer who submitted enquiry report dated 16.04.2018.

(f) Upon receipt of enquiry report, the Superintendent of Police Beed had issued a show cause notice dated 19.04.2018 to the applicant giving gist of charges and findings by the Departmental Enquiry Officer for getting say of the applicant. The applicant submitted his say on 02.05.2018. After considering all the facts of the case, the Superintendent of Police Beed passed Punishment Order of Removal from Service, dated 28.05.2018.

(g) The applicant had, thereafter, filed appeal dated 06.06.2018 against the punishment order before the Special Police Inspector General, Aurangabad Range which was kept pending vide order dated 10.08.2018 in view of pending criminal cases against him and writ petition filed

by the applicant for quashing of FIR filed against him. However, this Tribunal, in O.A. No. 706/2018 filed by the present applicant, ordered to decide the appeal before 16.10.2018. Therefore, appeal was decided on 05.10.2018 and the same was dismissed,

(h) The applicant had filed revision petition before the Director General of Police, Maharashtra State which was dismissed vide order dated 14.06.2019 by Additional Director General of Police (Administration), Maharashtra State.

4. Relief Sought by the Applicant: The applicant has prayed for relief in terms of prayer clause given on page No. 18, 19 and 19-A of the paper-book which is reproduced verbatim as follows:-

“Prayer: It is there most humbly prayed that Hon’ble Court may be pleased to allow the application and

1. The order passed by superintendent of police Beed respondent No. 4 bearing vide No. DE/60/[A] F.O./H.C. 912/2018/8231- Beed dated 28.05.2018 vide annexure no.

A-1 may kindly quashed and set aside.

2. The order passed by special Inspector General of police range Aurangabad in appeal bearing no. DE/ Appeal-103-18/X-HC/912/Beed/20 dated 05.10.2018 vide annexure no. A-2 may kindly quashed and set aside and the respondent may be directed to restrain the applicant by granting all service benefit for which the applicant entitled.

Add Prayer 2-A. In the particular facts and circumstances and considering the grounds raised in the original application

including the amended ground no. K-1, the order passed by the Ld. Director General of Police Mumbai, i.e. Resp. no. 2 vide order dated 14.06.2019 annexed as ANNEXURE R-3 at page no. 374 of the rejoinder may kindly be quashed and set aside by directing the sub-ordinate authority to reinstate the applicant forthwith on duty at his original post with all consequential service benefits arising there from treating the period as continuous on-duty period in the interest of justice.

3. In the peculiar facts and circumstances any other appropriate relief to meet the ends of justice may be awarded.”

5. Grounds for seeking relief: The applicant has given following grounds for challenging the orders of the respondents as reproduced verbatim in para 21 of the original application as follows: -

“A) The order passed by the learned superintendent of police Beed and the order passed in appeal preferred by the applicant before I.G. Aurangabad are not sustainable in law and they are violative of the principle of natural justice. Specially in the circumstances that on the complaints made against the applicant by one Bapu Kisan Khude from Solapurwadi enquiry was already conducted to the Thanedar Police Station Ambora at the complaint was finally disposed by the respondent authority.

The copy of the report submitted by the Police Station Officer Ambora is already annexed.

It is pertained to submit that Shri Bapu Kisan Khude had also forwarded his complaint to the Superintendent of Police Beed as the relevant time-

B) The complaint lodged by one Manoj Namdeo Thorave in the form of representation signed by the local villagers, enquiry was again made by the Police Sub-Inspector Shri Sirsat. However, after enquiry nothing was form against the applicant and that enquiry was disposed of finally and the Superintendent of Police Beed had received the enquiry report to that effect.

C) *In such circumstances only on the basis of the news items published in the local newspaper in respect of the same subject matter inquiry was conducted almost on the 3rd time and default report was submitted. And thus the action taken by the respondent is arbitrary and violating the principal of natural justice and abuse of power by the respondent authority and hence action taken by the respondent without keeping in mind the fact that the enquiry report had already been finally disposed of. However, looking to the news in respect of such complaint against the applicant, the superintendent of police look illegal action being influenced by the News Paper publication of the subject which was already decided by finalizing the enquiries for two occasions and the final reports of enquiry were also submitted to the Superintendent of Police Beed and in such circumstances on the basis of newspaper reports, the Superintendent of Police Beed took illegal action.*

D) *The departmental enquiry conducted by the authority is also in violation of the principal of natural justice specially because the officer conducting departmental enquiry and the presenting officer in the departmental enquiry are one and the same officer and as such during the course of the departmental enquiry with mind the authority has acted against the applicant without looking to the merits of the matter.*

The copy of the complaint made by the complainant in respect of preliminary enquiry being conducted and the default report submitted by one the same person is annexed herewith as Annexure A-20.

E) *During departmental enquiry when the evidence of the witnesses was being recorded, the applicant was compelled to sit outside the enquiry hall and in his absence the evidence of the witnesses from 1 to 5 was recorded. Later on the applicant was called inside and he was asked to cross examine the witnesses and therefore when the applicant made complaint about this the applicant was threaten by the enquiry officer that applicant may lodge complaint to the S.P. Beed etc.*

F) *Not only this but the defense witness was also threaten by calling in to the chamber and his statement was also recorded in absence of the applicant. Thus, the enquiry officer has arbitrarily*

and illegally recorded the evidence with malice and prejudice mind.

G) Not only this but the applicant was not supplied with the relevant documents which were important for raising certain defense and in absence of such document the departmental enquiry has not been fairly conducted and as such violates the departmental enquiry.

H) Not only this but the enquiry officer also compelled to applicant to submit his final statement without making due compliance including supplying the copies to the applicant during departmental enquiry.

I) In the totally of circumstances the applicant is removed from service as the final order passed by the Superintendent of Police Beed and thus the SP Beed has taken arbitrary and illegal action against the applicant by abusing the power vested with the authority and thus there is complete bias and predetermine approach without any application of mind and ignoring the parameters laid down in law as such the order passed by the learned Superintendent of Police Beed needs to be quashed and set aside.

J) The learned Inspector General of Police Aurangabad that is the appellate authority has also decided the appeal without application of mind and without considering the entire facts and evidence on record and no reasons are given in the order and as such being the authority exercising appellate power as per the provisions of the Maharashtra Police Act, has passed non speaking order and wrongly turned down the appeal of the applicant.

K) The respondents have seriously ignored the fact that there is matrimonial dispute pending before the J.M.F.C. court Beed as well as complaint of ill-treatment lodged by the wife of the applicant under section 498-A of I.P. Code.

K-1:- In the peculiar facts and circumstances, the order passed by the Ld. Director General of Police Mumbai i.e. respondent no. 2 is against law facts and evidence on record and there is serious perversity in the findings of the Ld. The Director General of Police

Mumbai i.e. respondent No. 2 while dismissing the appeal, specially because, the Ld. Director General of Police Mumbai has not considered the material aspects that there is inconsistency in the stand taken by the authority and clear violation of the legal provision including the circular issued by the Ld. Director General of Police Mumbai, relied upon by the applicant at page no. 369 which is annexed as ANNEXURE R-2. As well as the provisions of Bombay Police Manual part-1, rule 448, sub-rule 12 etc., and in such circumstances, there is complete non-application of mind by the Ld. Authority while dismissing the appeal and the order passed by the Ld. Authority does not bear and reasoning and scrutiny of evidence and hence beside the above grounds which are applicable to the order passed by the Ld. The Director General of Police Mumbai, the present ground in the amendment is also significant and material to consider the legitimate claim of the applicant.

L) Beside the above grounds the appellant craves leave to raise any other ground at the appropriate stage of the proceedings.”

6. Pleadings and Final Hearing: The applicant and the respondents had been given opportunity to be heard by making written submissions and also to argue the matter during final hearing. A brief mention of the same and of submissions made by the two sides may be summed up as follows:

(a) Affidavit in reply was filed on behalf of Respondent Nos. 1 to 5 on 29.08.2019 which was taken on record and copy of the same was served on the learned Advocate for the Applicant. Rejoinder to the Affidavit In Reply filed on behalf of respondent No. 1 to 5 was filed on behalf of applicant on

18.10.2019 which was taken on record and a copy thereof supplied to the other side. Learned Presenting Officer filed sur-rejoinder to the rejoinder affidavit of the applicant on 12.12.2019 which was taken on record and a copy of which was supplied to the learned Advocate for the applicant. As pleadings were complete, the matter was fixed for final hearing on 24.01.2022. However, on 24.01.2022 the learned Advocate for the applicant sought leave to amend the O.A. which, though not well explained, was allowed. Arguments of the learned Advocate for applicant were heard on 08.04.2022. Thereafter, the learned Advocate for the applicant submitted written notes of arguments along with citations relied upon by him during final hearing. Learned P.O. submitted written notes of arguments on 10.08.2022 after completing his arguments. The matter was then reserved for orders. In the meantime, constitution of the Bench was changed therefore, the matter was fixed for re-hearing on 18.11.2022 vide Oral Order dated 10.11.2022 which took place on 29.11.2022 and the matter was reserved for orders.

(b) The respondents have countered the claim of the applicant that he was not found guilty in enquiry conducted

by orders of his supervisory officers in the complaints filed by his wife and also by Shri Bapu Kisan Khude, R/o Solapurwadi concerning encroached grazing land for cultivation. The respondents have referred to the report of an enquiry conducted by revenue department through local Talathi in which complaint of encroachment over grazing land by wife of the applicant was found to be correct. In pursuance of which the Talathi of Solapurwadi lodged a First Information Report dated 27.11.2017 against the wife of the applicant based on which an offence was registered at Police Station Ambhora vide C.R. No. 287/2017 u/s 341, 447 IPC and during investigation involvement of the applicant too was found. Copy of the investigation report dated 14.04.2018 has been enclosed by the respondents along with affidavit in reply which is at page no. 324 of the paper-book. The respondents have further stated that based on investigation report the applicant was joined as co-accused and charge sheet had been filed in the Court of Judicial Magistrate First Class, Ashti on 19.04.2018.

(c) The respondents have further stated that the Departmental Enquiry was initiated against the applicant after environment was vitiated leading to public unrest

caused by acts of the applicant and his wife, which culminated into villagers protesting against them by organizing demonstrates on roads in Solapurwadi.

(d) The respondents have also contradicted all other allegation made by the applicant regarding the manner of conducting departmental enquiry and deciding appeal and revision petitions against the punishment order.

(e) It is admittedly that the criminal case filed against the applicant is pending for trial in the Court of JMFC, Ashti.

7. Analysis of facts on record and Oral Submissions Made:

For ascertaining merits in the grounds of filing the present matter and seeking relief prayed for, the underlying facts have been examined and analyzed as follows:-

(a) As mentioned in foregoing para, there were three complaints against the applicant before initiating departmental enquiry against him. The details of the complaints and findings of inquiry by supervisory officers are narrated below followed by inference drawn:-

(i) Copy of the complaint dated 16.09.2015 as filed by one Shri Bapu Kisan Khude before the District Superintendent of Police Beed has been enclosed as

Annexure A- 5 at page 53 of the paper-book for ready reference. The complainant had alleged that the applicant is threatening him with serious consequences if he did not handover possession of 10 acres of encroached grazing land in survey no. 147 used by the complainant for cultivation purposes since year 1988 to the applicant. *In response to this complaint filed by Shri Bapu Kisan Londhe, the Police Inspector, Ashti issued a letter vide a letter dated 18.11.2015, a copy of which is enclosed at page 55 of the paper-book. This letter seems to be overwritten for most of its part, but from legible part it appears that the Inspector, Police Station Ashti wrote to the applicant stating that he could not get any evidence of encroachment but, advised the applicant to avoid doing anything which may malign the image of the police force.*

(ii) Copy of the complaint dated 02.07.2016 filed by wife of the applicant is enclosed with the O.A. as Annexure A-4, page 50 of the paper-book. In this, the complainant had alleged that the applicant ill-treated her and pressurized her to vacate 3 acres of encroached grazing land which the complainant cultivates for supporting herself and her children. She further alleged that Bapu Kisan Khude instigated the applicant to do so and had prayed to give understanding to the present original applicant to support his family. In response to complaint filed by Mrs. Lilavati Namdeo Londhe the Police Inspector,

Police station Ashti issued advisory letter dated 05.08.2016 to the applicant.

(iii) Again, several villagers of Solapurwadi complained against the applicant vide complaint dated 07.07.2017. Police Sub-Inspector, Police Station Ambhora submitted his enquiry report dated 25.08.2017 stating that the applicant's wife Mrs. Lilavati Londhe had encroached grazing land in Solapurwadi, however, the matter is concerning revenue department therefore the complaint has been filed.

(iv) Based on above facts, the applicant has contended that after the three complaints against him were closed by the concerned enquiry officers; therefore, initiating departmental action against him based on subsequent complaints and newspaper reports was arbitrary and in violation of principles of natural justice., abuse of power by the respondent authority.

(v) On the other hand, the charge-sheet in D.E. against the applicant dated 08.12.2017 reveals that a petition dated 22.06.2017 was filed under signature of 106 residents of village Solapurwadi, alleging encroachment made by the applicant on grazing land, blocking the passage used by the villagers and the applicant threatening them of filing cases against them under SC and ST (Prevention of Atrocities) Act, 1989. A non-cognizable offence no. 455/2017 under section

507 IPC was filed by one Shri Manoj Namdeo Thorave r/o Solapurwadi against the applicant on 08.10.2017. Reacting to this the applicant's wife filed crime no. 267/2017 under section 504, 506 r/w s. 34 IPC and s. 3(1)(r)(s)) of SC and ST (Prevention of Atrocities) Act, 1989 against the complainant in offence No. 455/2017 on 26.10.2017. The residents of village Solapurwadi had organized demonstration and Road Blockade against the acts of the applicant on 07.11.2017. In nutshell, the applicant and his wife had created unrest in Solapurwadi, which led to problem of public order and peace.

(vi) Now, let us see facts on a timeline as follows :-

- Date of placing the applicant under suspension- 13.10.2017 based on report of API, Ambhora P.S. bearing outward No. 1815/2017, dated 11.10.2017
- Date of ordering preliminary enquiry- 13.10.2017 vide letter of SP Beed bearing No. विचौ/६०(अ)/कसुर/निलंबित/२०१७, dated 13.10.2017.
- Date of conducting preliminary enquiry- 31.10.2017
- Date of ordering Department Enquiry against applicant- 08.12.2017
- Date of filing FIR by Talathi, Solapurwadi against applicant's wife- 27.11.2017
- Date of investigating officer's report finding of involvement of the applicant in the offence registered against his wife- 18.01.2018 vide

communication bearing outward no. 86/2018 dated 18.01.2018 submitted by the respondents along with affidavit in reply (p 323 of paper-book)

(vii) From the facts revealed from the plotting of critical events on time-line, it is being inferred that ordering departmental enquiry against the applicant was not in violation of principles of natural justice or by abuse of power by the respondent authority.

Inference : Therefore, in our considered opinion, the applicant has not been able to establish that ordering departmental enquiry against him was based only on closed complaints and newspaper reports.

(b) Issues Relating to Conducting Departmental Enquiry:-

(i) The applicant has contended that the Departmental Enquiry Officer and the Presenting Officer was one and the same officer which is against principles of natural justice. He claims to have pointed this out in writing on 09.02.2018 by addressing a letter to the Superintendent of Police Beed which is at Annexure A-19, page 251 of paper-book. On perusal of representation made by the applicant, which is at Annexure A-19, it appears that the applicant had raised a different objection regarding the officer conducting preliminary enquiry and the same officer sending default report.

“ महोदय, सुमारे दोन वर्षापासून मा.डॉ. अभिजीत शिवाजीराव पाटील साहेब SDPO आष्टी आणि API एम.बी.टाक साहेब स्यागुशा. बीड यांच्याविरुद्ध माझ्या तक्रारी आहेत. त्यातच त्यांनी दि. १०.१०.२०१७ रोजी चुकिते कसूरी अहवाल पाठविल्यामुळे मला निलंबित केले गेले आहे. मी सध्या निलंबनाखाली आहे. कसूरी अहवाल पाठविणा-या अधिका-यांनी प्राथमिक चौकशी करू नये असे कायदेशीर संकेत आहेत. असे असतांना मा.डॉ. अभिजीत शिवाजीराव पाटील साहेब SDPO आष्टी यांनीच माझ्याविरुद्ध कसूरी अहवाल पाठवून त्यांनीच माझ्या विरुद्धची प्राथमिक चौकशी केल्याचे आज रोजी माझ्या लक्षात आले आहे. याचाच अर्थ असा की, फिर्यादी ही तेच, पोलीसही तेच, साक्षीदारही तेच आणि वकिलही तेच अशा पध्दतीने अशा पध्दतीने माझ्या विरुद्धच्या चौकशीमध्ये कामकाज चालू असल्याचे माझ्या लक्षात आले आहे. तेंव्हा अशा परिस्थितीमध्ये नैसर्गिक न्याय तत्त्वाला अनुसरून मला न्याय मिळेल काय? टसा प्रश्न माझ्या मनात निर्माण झाला आहे. तेव्हा सदर बाबीचा सहानुभुतीपूर्वक, गांभीर्यपूर्वक विचार होवून माझ्या विरुद्धच्या विभागीय चौकशीमध्ये नैसर्गिक न्याय तत्त्वाला अनुसरून मला न्याय मिळावा हीच नम्र विनंती तथा प्रार्थना आहे.”

Inference:- Therefore, it is inferred that the ground for seeking relief through the present original application as stated by the applicant does not sustain.

(ii) The applicant has further contended that he was compelled to sit outside the enquiry hall at the time statements of witness no. 1 to 5 were being recorded and he was allowed entry only for cross examining the witnesses. The applicant has also alleged that defense witnesses were threatened and therefore, their statements could not be recorded. The applicant has also contended that he was not supplied with relevant documents which were necessary for raising defense. The applicant has also alleged that the enquiry officer also compelled him to submit his final statement without supplying the copies of necessary documents. In totality, the applicant has

contended that the manner of conducting the departmental enquiry has vitiated entire process of departmental enquiry. Upon examination of records in the present matter, it is noticed that the names of 10 witnesses for examination by the prosecution had been communicated to the delinquent Shri Namdev D Londhe (applicant in the present O.A.) along with the Charge-sheet which has been enclosed at page no. 70 of the paper book. Though the applicant had reported to the Superintendent of police, Beed 14.02.2018 that he was not allowed to remain present during examination in chief of prosecution witnesses after 1600 hours on 13.02.2018, but the applicant was given copies of examination in chief of such remaining prosecution witnesses and the applicant was allowed to cross examine all the prosecution witnesses and remain present during their reexamination. Copies of records relating to cross examination are at 78 to 203 of paper-book, which corroborate the contentions of respondents that on 12.02.18 the applicant could attend examine all the prosecution witnesses and their re-examination by the Enquiry Officer. On 13.02.2018 he could attend cross examination of prosecution witnesses' No. 1 to 5 up to 04.15 pm. Thereafter, he was told to wait outside as the prosecution witnesses were not willing to depose in applicant's presence out of fear. Accordingly, the applicant waited outside enquiry hall from 04.15 to 19.00 pm and only signed the documents of depositions made during the period from 04.15 pm to 19.00 pm for examination in chief. Respondents have given explanation that they had issued

proper instructions to the enquiry officer in this regard, no further details of which have been furnished. The respondents have also submitted copies of submissions made by defense witnesses declining to participate in the Departmental Enquiry as defense witnesses, copies of such submissions are enclosed with Affidavit in Reply as Annexure R-5 at page 336 to 340 of paper book. The names of defense witnesses were communicated by the applicant on 09.03.2018 in response to questionnaire copy of which is at page no. 349 of the paper-book. The respondents have also submitted as Annexure A-6 to the affidavit in reply on page no. 342 to 344 of paper book as evidence to have supplied copies of all relevant documents to the applicant. As the defense witnesses declined to make submissions in favour of the applicant in this O.A. and the delinquent employee in the Departmental Proceeding, the applicant has speculated that the defense witnesses may be under fear.

Inference: After considering all the facts before us we are of considered opinion that the applicant has not been able to adduce evidence to lead us to conclude that there was any fatal irregularity in the process of conducting departmental inquiry.

(iii) Contention of applicant in respect of order passed by appellate authority: - The applicant has alleged that the appellate authority had decided his appeal by dismissing the same without application of mind and no speaking order had been passed. Pendency of matrimonial

dispute before the Judicial Magistrate, First Class was also not considered by the respondents. Contrary to the contentions of the applicant, it is noticed that the appellate authority had passed order dated 05.10.2018, copy of which is at Annexure A-2, page 28 of the paper-book, only after giving personal hearing to the appellant on 07.08.2018. As the applicant had filed O.A. 706/2018 before this Tribunal for early decision on his petition of appeal and this Tribunal had directed the appellate authority on 19.09.2018 to decide the pending appeal before 16.10.2018 (copy of the Tribunal's order is at page no. 248-249 of paper-book), the appellate authority passed speaking order on 05.10.2018, copy of which is at Annexure A-2, page no. 28 of paper-book.

Inference- In view of above, in our considered opinion, there is no merit in this contention of the applicant.

(iv) Contention of the applicant in respect of order passed by the Director General of Police on petition of revision- The applicant has contended that the Director General of Police Maharashtra State has not considered provisions of para no. 16 of the circular dated 01.05.2003 issued by his office (copy of which is at page 366 to 373 of paper-book), as well as the provisions of Bombay Police Manual, Volume 1, Rule 448, sub-rule 12 and has passed non-speaking order without scrutiny of evidence and without application of mind. However, upon examination of the said circular issued by the Director General of Police, Maharashtra State in the light of contention of the

applicant, it is observed that provisions of para 16 may have been relied upon by the applicant, which is being reproduced for accuracy and ready reference :-

“१६) काही प्रकरणात असे आढळून आले आहे की, कसुरी अहवाल पाठविणारा अणिकारीच त्या प्रकरणी कसुरदाराविरुद्ध प्राथमिक चौकशी करतो व प्राथमिक चौकशी करण्या-या अधिका-यास विभागीय चौकशीमध्ये चौकशी अधिकारी म्हणून नेमण्यात येते ते योग्य नाही. असे केल्याने नैसर्गिक न्याय तत्वाची पायमल होते व परिणामतः विभागीय चौकशीची कार्यवाही अवैध ठरते म्हणून खालील सुचना लक्षात ठेवाव्यात.

- अ) कसुरी अहवाल पाठविणा-या अधिका-याकडे त्या प्रकरणाची प्राथमिक चौकशी करण्यासाठी देऊ नये.
- ब) तसेच प्राथमिक चौकशी केलेल्या अधिका-याची विभागीय चौकशीमध्ये चौकशी अधिकारी म्हणून नेमणूक करण्यात येऊ नये.
- क) तसेच ज्या अधिका-याने प्राथमिक चौकशी केली आहे त्याला विभागीय चौकशीमध्ये सरकारी साक्षीदार म्हणून घेऊ नये.”

In the present matter, the respondent No. 1 to 5 have clarified that the Default Report was prepared by Shri Sudam D. Shirsat, Deputy Inspector of police, Police Station- Ambhora, District Beed, dated 25.08.2017 which is at Annexure A-6, page No. 56 of paper-book and the same was directly submitted to the Superintendent of Police, Beed. On the other hand, preliminary enquiry was conducted by Sub-Divisional Police Officer, Ashti Sub-Division on 31.10.2017.

Inference: Therefore, the contention that the Departmental Enquiry had been conducted in violation with the guidelines issued by the Director General of Police is not substantiated by the applicant.

(v) The applicant also relies on Bombay Police Manual, 1959, Rule 448- General Principles of Departmental Proceedings – sub-rule (12) which reads as follows:-

“The officer conducting the proceeding should then call all necessary, witnesses in support of the charge and, in the delinquent's presence, record statements they may have to make. He should then give the delinquent an opportunity of cross-examining each witness after his statement in support of the charge is completed, any such cross-examination being recorded below the statement of the witness concerned.”

Inference: Upon considering the fact that the applicant and his family members have a history of threatening the villagers and filing cases u/s 3 of SC and ST (Prevention of Atrocities) Act, 1989 as a retaliatory step, the enquiry officer was within right to take steps of recording submissions of prosecution witnesses after asking the applicant in the OA (Delinquent in Departmental Enquiry) to sit outside during examination of chief. Thereafter, the applicant was provided with a copy of records of examination in chief and the applicant was facilitated to cross examine prosecution witnesses and remain present during reexamination also. Other alternative that was available for the respondent No. 4 was to pass the order exercising powers under Article 311(2)(b) of the Constitution of India. The option of conducting Departmental Enquiry in the manner elaborated above, in our opinion, was appropriate as compared to taking action in exercise of power under Article 311 (2)(b) of the Constitution of India. There is, therefore, no valid reason to conclude contravention of provisions of rule 449 of Bombay Police Manual, 1959 in this regard.

(vi) The applicant has also contended that the Director General of Police has not scrutinized evidence adduced during Departmental Enquiry. However, in our considered opinion, the process of revision is not akin to re-enquiry or evaluation of evidence except in respect of glaring irregularities / discrepancies in procedure adopted and for the purpose of assessment of quantum of punishment inflicted for reasonableness.

8. Conclusion: From the fact based inferences which have been drawn after analysis of facts on record and oral submissions made by the contesting parties, in our considered opinion, the applicant has been rightly held to be guilty of misconduct, which is detrimental to public interest and image of Police Force. Therefore, there is no merit in this Original Application. Hence, the following order:-

ORDER

- (A) The Original Application No. 337 of 2019 is dismissed for reason on being devoid of merit.
- (B) No order as to costs.

MEMBER (A)

MEMBER (J)

Kpb/D.B. O.A. No. 337/2019 VDD & BK 2022 Removal from service