

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 586 OF 2017

DIST. : PARBHANI

Shaikh Fasiuddin s/o Mohammad Gowsoddin,
Age. 61 years, Occu. : Retired Assistant Police
Inspector,
R/o Amin Colony, Amina Manzil, Dhar Road,
Near Amin Shah Baba Dargah, Parbhani,
Taluka and District Parbhani.

-- APPLICANT

VERSUS

1. The Additional Director General of Police,
(Administration),
Maharashtra State, Mumbai.
2. Special Inspector General of Police,
Nanded Region, Nanded.
3. Superintendent of Police,
Parbhani.

-- RESPONDENTS

APPEARANCE :- Smt. Firdose Shaikh, learned Advocate
holding for Shri Naseem R. Shaikh, learned
Advocate for the applicant.

: Smt. Sanjivani Deshmukh Ghate, learned
Presenting Officer for the respondents.

CORAM : Hon'ble Shri B.P. Patil, Member (J)

DATE : 24.10.2018.

J U D G E M E N T

1. Applicant has challenged the order dtd. 23.6.2017 passed by
the res. no. 1 dismissing his revision / appeal challenging the

order passed by the res. no. 2 on 2.7.2014 and confirming the order passed by the res. no. 3 dtd. 14.10.2013 imposing the punishment to withhold his one increment for one year, by filing the original application.

2. Applicant joined in the Police department on 5.2.1975 as a Police Constable. In the year 2009 he was promoted as a Assistant Police Inspector (for short A.P.I.). In the year 2011 he was transferred to Police Station, Daithana, Dist. Parbhani and since then he was working there. It is his contention that he rendered the service honestly and sincerely. He received more than 250 awards during his service tenure for performing extraordinary work.

3. When he was serving at Daithane, he was intending to proceed on leave from 15.6.2013 to 29.6.2013 and therefore, he had filed an application with res. no. 3 for granting leave. His leave application was sanctioned accordingly by the respondent No. 3. On 14.6.2013 he proceeded on leave by handing over the charge of his post to Shri E.H. Jadhav, Assistant Police Inspector of Police Station, Parbhani (Rural). Before proceeding on leave he had assigned motor cycle night patrolling duty to police personnel and made entry to that effect in the station diary. He had taken utmost care while proceeding on leave. He had informed the res.

no. 3 about his leave before proceeding on leave and res. no. 3 permitted him to proceed on leave.

4. On 15.6.2013 in between 1.30 a.m. and 2.00 a.m. a dacoity has been committed on Pokharni to Daithana road. The S.D.P.O. visited that place and then he came to know about leave of the applicant. Thereafter he had issued show cause notice to the applicant. Applicant has given reply to the said show cause notice. It is the contention of the applicant that the incident occurred after he proceeded on leave and he handed over the charge of his post to Shri Jadhav, A.P.I., Police Station, Parbhani (Rural) before proceeding on leave. He had also made arrangement for night patrolling duty. He had taken utmost care while proceeding on leave. It is his contention that the said incident had occurred when he was on leave. Res. no. 3 had not considered all these aspects and explanation given by him and passed the order dtd. 14.10.2013 holding him guilty and imposed the punishment of withholding his one increment for one year. Being aggrieved by the said order, the applicant has preferred appeal before the res. no. 2, but the res. no. 2 had not considered the evidence produced by the applicant and dismissed his appeal by the order dtd. 2.7.2014. Applicant has thereafter, preferred appeal / revision petition before the res. no. 1 challenging the

orders of res. nos. 2 & 3, but the res. no. 1 has also not considered his submissions properly and dismissed his appeal / revision by order dtd. 23.6.2017. Applicant has challenged the said orders by filing this O.A. It is his contention that the res. nos. 1 to 3 have not considered the explanation given by him. They have not considered the fact that the applicant was not negligent and there was no negligence on his part. It is his contention that he had taken utmost care while proceeding on leave. He had handed over the charge of the post to Shri E.H. Jadhav, A.P.I., Police Station, Parbhani (Rural) and intimated the said fact to res. no. 3. It is his contention that he had rendered service for more than 40 years and he was on the verge of retirement. But the respondents have not considered the explanation given by him to the show cause notice and held him guilty for negligence in discharging the duty and imposed punishment accordingly. Therefore, he prayed to allow the O.A. and to quash the punishment imposed by the res. no. 3 by the order dtd. 14.10.2013 and to exonerate him from the charges levelled against him.

5. Respondent nos. 1 to 3 resisted the application by filing their affidavit in reply. They have not disputed the fact that the applicant was A.P.I. at Daithana and he had applied for leave from

15.6.2013 to 29.6.2013. They have not disputed the fact that the res. no. 3 granted the leave application of the applicant on 10.5.2013 and granted leave to him for the said period. They have not disputed the fact that on 15/6/2013 in between 1.30 a.m. and 2.00 a.m. an incident of dacoity had been occurred on Pokharni to Daithana road. It is their contention that the applicant left the Police Station at about 8.30 p.m. without intimating the res. no. 3 or S.D.P.O., Parbhani, who was in-charge of the sub division in which Daithane Police Station is situated and which whose jurisdiction the incident of dacoity had been committed. As per the procedure the Officer who wants to proceed on leave should not leave the office until the officer, who is kept in-charge of the Police Station would come and take charge. It is their contention that it was obligatory on the part of the applicant not to proceed on leave till another Officer, who was kept in-charge of his post, takes the charge of the post. Applicant had not followed the said procedure and he left the Police Station at 8.30 p.m. though Shri Jadhav who was kept in charge of the post of the applicant had not taken the charge of the post. Applicant had not informed the S.D.P.O., Parbhani (Rural) before proceeding on leave though it was necessary to communicate the S.D.P.O. by the applicant. It is their contention that the applicant was in habit to leave the office without prior permission of superior Officer. It is their contention

that the explanation of the applicant was not satisfactory and therefore the res. no. 3 has passed the order imposing penalty of withholding one increment of the applicant for one year for the negligence on his part. It is their contention that they have followed the due procedure while deciding the appeal / revision preferred by the applicant. There is no illegality in the orders passed by the res. nos. 1 to 3 and therefore they justified the orders and prayed to reject the O.A.

6. I have heard Smt. Firdose Shaikh, learned Advocate holding for Shri Naseem R. Shaikh, learned Advocate for the applicant and Smt. Sanjivani Deshmukh Ghate, learned Presenting Officer for the respondents. I have gone through the various documents filed on record by both the sides.

7. Admittedly the applicant joined the Police Department on 5.2.1975 as a Police Constable. Thereafter in due course he was promoted as a Assistant Police Inspector in the year 2009. In the year 2010 he was transferred and posted at Police Station Daithana, Dist. Parbhani. Admittedly on 10.5.2013 he moved an application for leave from 15.6.2013 to 29.6.2013 to res. no. 3. His leave has been sanctioned by the res. no. 3 and he was permitted to enjoy the leave from 15.6.2013 to 29.6.2013. One Shri E.H. Jadhav, A.P.I., Police Station, Parbhani (Rural) was kept

in-charge of the post of the applicant. Admittedly applicant proceeded on leave on 14.7.2013 at 8.30 p.m. without intimating his Superior Officer i.e. S.D.P.O., Parbhani (Rural). On 15.7.2013 in between 1.30 a.m. and 2.00 a.m. a dacoity was committed on Pokharni to Daithana road. The S.D.P.O. had visited the place of incident and that time A.P.I. Shri Jadhav (the applicant) was found absent. Therefore the res. no. 3 issued show cause notice to the applicant and after conclusion of departmental enquiry and after giving an opportunity of hearing to the applicant the res. no. 3 passed the impugned order imposing punishment on the applicant. The said order has been challenged by the applicant by filing appeal before the res. no. 2, but it was dismissed on 2.7.2014. Admittedly he preferred review / appeal against the said order before the res. no.1, but it was also dismissed on 23.6.2017.

8. Learned Advocate for the applicant has submitted that the applicant was not negligent while proceeding on leave. He got sanctioned the leave well in advance and after intimating the Officer, who was kept in-charge of the post, he had proceeded on leave on 14.7.2013 at 8.30 p.m. He had submitted that before proceeding on leave he assigned night patrolling duty to police personnel and made entry to that effect in the station diary.

Applicant had informed the res. no. 3 as well as Shri Jadhav, A.P.I., Police Station, Parbhani (Rural) before leaving the Police Station and after their consent he left the Police Station. She has submitted that the incident of dacoity occurred on 15.6.2013 in between 1.30 a.m. to 2.00 a.m. i.e. after the applicant proceeded on leave and therefore he was not responsible for the said incident. She has submitted that the Disciplinary Authority had not considered the fact properly while imposing penalty against the applicant. The Disciplinary Authority had not considered the nature and gravity of misconduct and past conduct of the applicant while imposing penalty. She has submitted that the punishment imposed on the applicant is disproportionate and arbitrary and therefore it is requires to be quashed. In support of her submission, she has placed reliance on the case of **Deputy Commissioner, K.V.S. and Ors. Vs. J. Hussain [AIR 2014 SC 766]**, wherein it is observed by Hon'ble Supreme Court as under :-

“ it is the disciplinary authority with whom lies the discretion to decide as to what kind of punishment is to be imposed on delinquent. This discretion has to be exercised objectively keeping in mind the nature and gravity of charge. The Disciplinary Authority is to decide a particular penalty specified in the relevant Rules. Host of factors go into the decision making while exercising such a discretion which include, apart from the nature

and gravity of misconduct, past conduct, nature of duties assigned to the delinquent, responsibility of duties assigned to the delinquent, previous penalty, if any, and the discipline required to be maintained in department or establishment where he works, as well as extenuating circumstances, if any exist”

9. Learned Advocate for the Applicant has submitted that since the punishment imposed on him is disproportionate to the charges levelled against the applicant and considering the fact that he has already retired in the year 2014, it is just to quash the impugned order. Therefore, she prayed to allow the O.A. and quash the impugned orders.

10. Learned P.O. has submitted that the leave to the applicant from 15.6.2013 to 29.6.2013 was sanctioned. Before proceeding on leave the applicant has to handover the charge of the Police Station to incoming Officer who was kept in-charge of the post and to intimate his immediate superior Officer in that regard. Applicant has not handed over the charge of the post to Shri Jadhav, A.P.I., Police Station, Parbhani (Rural) and had not informed the S.D.P.O., Parbhani before proceeding on leave. As no responsible officer was present in the Police Station, the incident of dacoity had been occurred. She has submitted that the conduct of the applicant leaving the Police Station before

arrival of in charge officer itself amounts misconduct. There was negligence on the part of the applicant and therefore show cause notice has been issued to him by the res. no. 3. After considering his reply the res. no. 3 has passed the order imposing penalty on the applicant on 14.10.2013 and same has been confirmed in the appeal and revision decided by the res. no. 2 and res. no. 1 respectively. She has submitted that considering the gravity and nature of the misconduct, the punishment imposed on the applicant is appropriate and therefore no interference is called for in the impugned orders. Therefore she supported the impugned orders.

11. I have gone through the documents placed on record. On perusal of the said documents, it reveals that the applicant was in-charge of the Police Station, Daithana, Dist. Parbhani at the relevant time. No doubt, leave to the applicant from 15.6.2013 to 29.6.2013 was sanctioned by the res. no. 3 but as per the procedure the applicant has to handover the charge of the post to incoming Police Officer i.e. Shri Jadhav, A.P.I., Police Station, Parbhani (Rural) before proceeding on leave and to intimate said fact to the superior authority i.e. S.D.P.O. but there is nothing on record except the bare statement of the applicant to show that the applicant actually handed over the charge of the post to Shri

Jadhav. Applicant has admitted the fact that he had not intimated his immediate superior authority regarding his leave and handing over the charge of the post to Shri Jadhav, before proceeding on leave. The conduct of the applicant shows that he had no regards towards his superiors and he had not followed the due procedure before proceeding on leave. Because of negligent act of the applicant no competent and responsible Officer was available in the Police Station at Daithana to prevent the incident of dacoity took place early in the morning on 15.6.2018. Res. no. 3 had issued a show cause notice to the applicant to which he has given his reply. Res. no. 3 has considered the reply of the applicant and after giving opportunity of hearing to the applicant, passed the order dtd. 14.10.2013 imposing punishment of stoppage of one increment for one year. The provisions of natural justice had been followed by the res. no. 3 while making the enquiry and imposing the punishment on the applicant. The punishment imposed against the applicant cannot be said to be disproportionate considering the gravity of the charge leveled against him and the nature of his misconduct. Therefore, the punishment on the applicant is appropriate and proper. Therefore, in my opinion there is no illegality in the order passed by the res. no. 3 on 14.10.2013.

12. Res. nos. 1 & 2 had also given opportunity of hearing to the applicant while deciding the appeal/revision filed by the applicant. They have personally heard the applicant and thereafter rejected the appeal & revision by recording reasons. There is no illegality in the orders passed by the res. nos. 2 & 3 on 2.7.2014 & 23.6.2017 in appeal and revision petition filed by the applicant. Therefore, I find no illegality in the order passed by them.

13. I have also gone through the decision in case of **Deputy Commissioner, K.V.S. and Ors.** (supra) cited by the learned Advocate for the applicant. I have no dispute regarding settled principles laid down therein. Even considering the said principles there is no illegality in the impugned orders passed by the res. nos. 3 and res. nos. 1 & 2 in the appeal and revision application of the applicant.

14. In view of above facts and circumstances placed on record, in my opinion, the impugned order passed by the respondent No. 3 imposing punishment on the applicant is proper and appropriate. There is no illegality in the orders passed by the res. nos. 1 to 3 and therefore no interference is called for in the impugned orders. There is no merit in the O.A. Consequently O.A. deserves to be dismissed.

15. In view of above discussion, the O.A. is dismissed with no order as to costs.

PLACE : AURANGABAD
DATE : 24.10.2018.

(B.P. PATIL)
MEMBER (J)

ARJ-O.A.NO. 586-2017 BPP (MINOR PUNISHMENT)