

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 813 OF 2018

(Subject : Removal From Service)

DISTRICT : AHMEDNAGAR

Robinson S/o Rahat Masih,)
Age : 54 years, Occu. : Nill,)
R/o. Saurav Nagar, Near Sai Mandir,)
Bhingar, Ahmednagar, Tq. & Dist. Ahmednagar.)

.. **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through its Principal Secretary,)
Home Department,)
Mantralaya, Mumbai -32.)
2. **The Additional Inspector General of Police,**)
(Administration) Maharashtra State,)
Shahid Bhagatsingh Marg, Kulaba,)
Mumbai.)
3. **The Inspector General of Police,**)
Gadkari Chowk, Nashik Region,)
Nasik.)
4. **The Superintendent of Police,**)
Ahmednagar, Dist. Ahmednagar.)
5. **The Sub-Divisional Police Officer,**)
Shevgaon Division, Shevgaon,)
Tq. Shevgaon, Dist. Ahmednagar.)

.. **RESPONDENTS**

APPEARANCE : Shri N.B. Narwade, Advocate for the
Applicant.

: Shri I.S. Thorat, Presenting Officer for
Respondents.

CORAM : Justice Shri P.R. Bora, Member (J)
AND
Shri Bijay Kumar, Member (A)
DATE : 01.02.2022.

O R D E R

(Pronounced on 1st February, 2022)

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

1. This Original Application has been filed by the applicant Shri Robinson S/o Rahat Masih, R/o Ahmednagar, invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985, thereby, challenging the impugned order passed by the Additional Director General of Police (Administration) Maharashtra State dated 14.08.2018, which was communicated to the applicant by letter no. पोमसं/१३/२२/१०(मसिह-अहमदनगर)/१२/२०१८, dated 14.08.2018. The present O.A. has been filed on 12.10.2018 and therefore, within limitation.

2. The facts admitted by the two contesting sides may be summarized as follows:-

(a) Additional Commissioner of Police (Crime) Pune City had, vide his letter No. कक्ष आपोआ/गुन्हे/कार्या/७९/२०१९, dated

03.05.2015, reported to the Superintendent of Police, Ahmednagar that Pune City Police (Crime) had, while investigating in to offences of chain snatching in Pune city, intercepted a mobile phone No. 8308378663 used by one Mrs. Jarina Irani from Shrirampur, district- Ahmednagar and got information Mrs. Jarina Irani from Shrirampur, district Ahmednagar and Police Head Constable /B. No. 942 namely, Shri Robinson Rahat Masih of Jamkhed Police Station, district Ahmednagar had mobile phone communications 73 times within one year period of year 2015. As per the report, the said mobile was recovered by Parbhani Police from one Shri Ali Raza Sabbir Baig, the husband of Mrs. Jarina Irani and other two, who were arrested in connection with offence of chain snatching in year 2011. Pune city police had forwarded, along with the report, a CD containing recordings of phone communications and transcript thereof with special reference to communication between Mrs. Jarina Irani and Shri Robinsonnn Rahat Masih, the Head Constable which the two had on 02.04.2015. Superintendent of Police Ahmednagar had, upon receipt of the report from Additional Commissioner of Police (Crime) Pune City,

entrusted the task of conducting a preliminary inquiry in the matter to the local Crime Branch of Ahmednagar District.

(b) Local Crime Branch, Ahmednagar submitted the preliminary inquiry report dated 10.08.2015 to the Superintendent of Police, Ahmednagar who in turn, ordered a Departmental Enquiry against the applicant vide order No. कक्ष ४(७)/विचौ/१३१५३/२०१५, dated 01.10.2015 under provisions of Rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (In short, "Rules 1979") and appointed Sub-Divisional Officer, Shevgaon as Departmental Enquiry Officer. Memorandum of Charges along with Articles of Charges, Statement of Imputations of Misconduct, list of documents by which and list of witness with whose help the articles of charges are proposed to be sustained were served on the applicant by the Departmental Enquiry Officer on 13.10.2015.

(c) The said departmental enquiry was completed and enquiry report was submitted by the Enquiry Officer vide his letter dated 30.04.2016. A copy of the said enquiry report was provided by the Superintendent of Police,

Ahmednagar to the applicant along with a show-cause notice dated 17.06.2016 mentioning therein the proposed penalty of “dismissal” from service.

(d) The applicant submitted his say to the show-cause notice vide a letter dated 16.07.2016 addressed to the Superintendent of Police, Ahmednagar.

(e) After considering the findings in the departmental enquiry and say of the applicant to the same and to the proposal penalty, the Superintendent of Police, Ahmednagar inflicted a penalty of “Removal from Service” on the applicant.

(f) The applicant then filed appeal before the Special Inspector General of Police, Nashik Range on 20.10.2016 which was dismissed by the appellate authority vide an order dated 06.01.2017.

(g) The applicant subsequently filed revision application dated 26.02.2017 which too was rejected by the Additional Director General of Police (Administration) vide his order dated 14.08.2018.

3. Applicant has submitted several grounds for seeking relief against the impugned order dated 14.08.2018 passed by the Additional Director General of Police (Administration), which are reproduced for ready reference as follows:-

“6(12)(I) The applicant submits that, the respondent authorities had not considered the provisions of the law as well as evidence on record had not been considered properly and the respondent No. 4 Superintendent of Police had wrongly passed the order dated 30.09.2016 coming to the conclusion that, charges had been proved and the present applicant had not given the proper explanation and hence, it has been wrongly considered that, the charges had been proved and wrongly passed the order of removal from service dated 30.09.2016 which deserves to be quashed and set aside.

(II) The applicant submits that, the respondent No. 4 Superintendent of Police, Ahmednagar as well as the respondent No. 2 Inspector General of Police, Maharashtra State had not considered that, the charges in respect of remaining in touch with Jarina Alarza Baig had been wrongly appreciated as the present applicant and taken in custody of the accused and disclosed the commission of crime. Hence, the Pune Police wrongly given the information against the present applicant and it has been also submitted that, there was no such communication but this charge had been wrongly appreciated.

(III) The applicant submits that, the Inquiry Officer had not given the proper reasoning that, in which crime there was communication and in respect of which accused the amount

had been demanded and by stretching the matter wrong charges had been framed and that was wrongly appreciated.

(IV) The applicant submits that, he had not received the entire documents, even he had not received the copy of script of the C.D., but without giving that, inquiry was conducted, even it has been submitted by the applicant and proved inquiry report that Jarina Irani only stated that, she is acquainted with the present applicant and only on this ground the present applicant was held responsible.

(V) The applicant submits that, even in respect of the demand of amount, there is no any complaint had been made towards the office of anticorruption, even the respondent authorities had not considered the evidence of witness properly namely Tanvin Mahammad Shaikh, Sunil Sitaram Chava, Tukaram Natthu Kale and even, answer given by them had not considered, as it revealed in the evidence of Tanvin Mahammad Ali Shaikh there was of difference the present applicant and Pune Police and the said witness also categorically stated that, there was no financial transaction took place between applicant and others.

(VI) That, the respondent authorities had not considered the evidence of other witnesses, even, all the good works of the applicant had not been considered as a number of crimes the present applicant help for disclosing the crime, but entire good work of the applicant had not been taken into consideration.

(VII) The applicant submits that, even the Jarina Aliza Baig had clearly stated in the preliminary inquiry in the question asked to her that, there was only communication in respect of the accused and there was communication between applicant

and Jarina in respect of disclosing the information, as Jarina is the secret informant of the applicant. Even, she was also not knowing the mobile of the applicant, but the entire evidence of the Jarina had been discarded.

(VIII) The applicant submits that, the respondent authorities had not considered the answer given by the Tukaram Nathuram Kale, as he had clearly stated there was no communication in respect of transaction of the money. Even, in the evidence of Sunil Sitaram Chavan it also revealed that, there was not financial transaction and the evidence of Tenvier Mohammad Ali given in the form of question and answer form is at all not considered.

(IX) That, the Sub-Divisional Police Officer Shevgaon while conducting the inquiry and submitted the inquiry report casually only stating that there was communication in respect of the financial transaction and this own conclusion drawn by the Sub-Divisional Police Officer, Shevgaon is against the documentary evidence and all the higher authorities including Superintendent of Police, Ahmednagar, Inspector General of Police, Maharashtra State without going into the matter casually confirmed the order of removal from service of the applicant and hence, the order dated 14.08.2018 as well as 30.09.2016 deserves to be quashed and set aside and the applicant deserves to be reinstated in full back wages.

(X) That, the respondent authorities had not considered that, the present applicant had acted within the four corners of law and he had arrested nearly about 25 to 30 accused and though, he had submitted that, the proper opportunity has not been given to him. Even, before each and every authority he had submitted that, he had work honestly in the

police department and nearly about 200 rewards had been given to the present applicant and number of reward is pending and he had honestly performed the duties, but all this aspect had not been considered.

(XI) That, though the representation had been made to the respondent authorities, but that had not taken into consideration the grievance of the petitioner and as there is no other efficacious remedy available now with the present applicant and as the present applicant is facing great hardship and inconvenience and because of the removal from service, applicant is literally came on the road and hence, the order of removal from service deserves to be quashed and set aside.

(XII) That, though, the applicant had approached to the Higher Authority, but the Higher Authority had neither quashed and set aside the removal from service order not given any favourable decision and hence, as no remedy is available with the present applicant he had approached this Hon'ble Tribunal. From the above mentioned facts and circumstances, it reveals that, without there being any concrete reason the applicant had been removal from the service. If the removal from the service order is not quashed and set aside. Then the applicant will face great hardship and hence, as no way left open to the applicant except to approach to this Hon'ble Tribunal, hence, the applicant had filed this Original Application.”

4. **Relief prayed for** – The applicant has prayed for relief in terms of para 9(A) to 9(D) which is being reproduced below for ready reference :-

- “(A) This Original Application may kindly be allowed.*
- (B) By issuing appropriate order or direction in the like nature, the Removal from service order dated 30.09.2016 bearing outward No. Desk-4(7)/VCHU/RSH passed by respondent No. 4, the Superintendent of Police, Ahmednagar, Tq. & Dist. Ahmednagar and confirmed by the respondent No. 2 the Additional Inspector General of Police, (Administration), Maharashtra State by order dated 14.08.2018 may kindly be quashed and set aside and the applicant may kindly be reinstated in service with all service benefits retrospectively.*
- (C) Pending hearing and final this Original Application, the Removal from service order dated 30.09.2016 bearing outward No. Desk-4(7)/VCHU/RSH passed by respondent No. 4, the Superintendent of Police, Ahmednagar, Tq. & Dist. Ahmednagar and confirmed by the respondent No. 2 the Additional Inspector General of Police, (Administration), Maharashtra State by order dated 14.08.2018 may kindly be stayed.*
- (D) Any other suitable and equitable relief may kindly be granted in favour of the applicant.”*

5. **Pleadings and arguments :-**

(a) The respondent Nos. 1 to 5 submitted affidavit in reply on 18.03.2019. In addition, respondent No. 2 filed a separate additional affidavit in reply on 25.11.2021. The learned Sr. Counsel for the applicant mentioned that the

filing of rejoinder to the affidavit in reply was not required. With consent of the parties, the present matter was taken up for hearing at the stage of admission.

(b) The matter was part part-heard before the Division Bench comprising of Shri V.D. Dongre, Member (J) and Bijay Kumar, Member (A) on 29.07.2021 and 16.09.2021. During the arguments, the respondents were requested to present copy of record as regards authority of intercepting phone calls of Mrs. Jarina Irani and preparing transcript. Likewise, learned counsel for applicant was required to present the copy of official record prepared and maintained by the applicant by way of evidence towards intelligence gathered by him from his contacts / sources so that bona-fide of his regular telephonic communication can be ascertained.

(c) The matter was heard afresh on change in constitution of the Division Bench. At this stage documents submitted by the learned Presenting Officer received from Dy. Commissioner of Police (Crime), Pune dated 16.11.2021 and 10.01.2022 along with copy of Gazette of India dated 28.01.2014 were taken as record on 03.01.2022 and a copy

of the same supplied to the other side. The learned Counsel for the applicant submitted written notes of arguments on 03.01.2022, a copy of which too was given to the respondents, who intern, did not wish to file any written notes of arguments. Learned senior counsel for the applicant cited a copy of judgment dated 18.09.2014 in Civil Appeal No. 4226 of 2012, Anvar P. V. Vs. P. K. Basheer (**2014 AIR SCW 5695**).

(d) This matter was reserved for order on 19.01.2022.

6. **Analysis of facts and conclusion** - On perusal of grounds of filing the original application and relief sought, following main facts have been identified for analysis and inferences have been drawn in respect of them as follows: -

(a) Before calling the applicant for preliminary inquiry Mrs. Jarina Irani was interrogated and her statement was recorded by the inquiry officer. Copy of her statement and the copy of the report received by Superintendent of Police, Ahmednagar sent by the Additional Commissioner of Police (Crime) Pune City was made available to the applicant for reference at the time of preliminary inquiry. Thereafter, the applicant was confronted with the statement of Mrs. Jarina

Irani and other relevant questions. However, the applicant remained reluctant to cooperate with the inquiry and left insisting upon getting copy of the said documents and CD of intercepted telephonic conversation before making any submission for preliminary enquiry. It is also observed that the applicant has not been forthcoming to rebut the statement made by Mrs. Jarina Irani about the background facts in which she claimed to have developed familiarity with the applicant and got help from the applicant in getting one Shri Md. Suru Irani and Shri Akabar Sher Khan Pathan released from police custody who were arrested by Ahmednagar police. The applicant was reluctant to make any categorical statement about the contents of telephonic conversation he had with Mrs. Jarina Irani as per transcript shown to him during preliminary inquiry as well as during the departmental enquiry.

(b) The applicant has further contended that the officer who had conducted preliminary inquiry, had not been examined as a witness by the departmental inquiry officer. However, it is a matter of record that a copy of preliminary inquiry had been provided to the applicant along with the charge sheet and the deponent in the preliminary enquiry

namely, Mrs. Jarina Irani was examined as witness also. Therefore, in our considered opinion, no prejudice has been caused to the applicant by not getting presence of the preliminary inquiry officer as a witness on behalf of the employer / respondent.

(c) It is also the contention of the applicant that the evaluation by Departmental Inquiry Officer of evidences and statements of witnesses produced by prosecution lacked merit. Applicant has also contended that the disciplinary authority has accepted the departmental inquiry report mechanically without considering the fact that Mrs. Jarina Irani was only an informant for the applicant and the intercepted telephonic conversation does not reveal that actual financial transaction took place. Moreover, no case has been registered against the applicant on this count with the Anti-Corruption Bureau. Against this contention of the applicant we observe that the applicant has not produced any documentary evidence in form of a Note / Diary Notings / report submitted to his superiors in the office etc. to corroborate his claim of Mrs. Jarina Irani being his informer. Moreover, the nature of telephonic conversation too, does not show any element of being a conversation between a police

officer and his informer. If the applicant had really been communicating with Mrs. Jarina Irani as informant, then he should have indicated the fact at the stage of preliminary inquiry itself. Taking this such a stand at a later stage of filing appeal / revision or of original application or so and that too, without any corroborative evidence, makes the same an afterthought.

(d) The applicant has also alleged that his service record of good work done has not been considered by the disciplinary authority. This claim of the applicant has been rebutted by the respondent No. 2 para 7 of the additional affidavit filed by him on 25.11.2021 revealing that the applicant has 22 punishments to his discredit. Moreover, the disciplinary authority had taken lenient view on point of punishment and inflicted punishment of "Removal from Service" instead of originally proposed punishment of "Dismissal".

(e) The applicant has questioned the admissibility of facts gathered by interception of mobile phone conversation made by Mrs. Jarina Irani with the applicant in view of that the same is not admissible under provisions of S 65 (b) of Indian Evidence Act, 1872 as the interception was done

without approval from competent authority. The respondents had been given opportunity to produce a copy of the permission granted by competent authority for interception of telephonic conversation by Mrs. Jarina Irani with the applicant on his mobile phone. However, the respondents have submitted a report that the copies of all the 70 permissions granted by the Additional Chief Secretary (Home) Government of Maharashtra have been destroyed on 23.08.2016 as per provisions of Indian Telegraph Act, 1885 read with the rule 419 (a) (18) of Indian Telegraph Act (First Amendment of 2014) Rules, 2014. Based on this report the respondents have claimed that the evidence of intercepted phone calls is admissible under provisions of Indian Evidence Act, 1872.

(f) The applicant is also aggrieved that the decisions of the appellate authority, i.e. Special Inspector General Police, Nashik Range and Additional Director General of Police before whom a revision application had been filed by him, both of whom have rejected his petitions. However, in our opinion, the said authorities have followed the procedure and decided the matter on merit.

(g) Upon considering all the facts before us and oral submissions made by the two contesting sides, in our considered opinion, the applicant has been rightly held to be guilty of misconduct which makes him unbecoming of continuing as a police officer. Therefore, we do not find any merit in the original application and pass following order :-

ORDER

- (A) The Original Application No. 813 of 2018 is, hereby, dismissed for reason of being devoid of merit.
- (B) No order as to costs.

MEMBER (A)

MEMBER (J)