

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 87 OF 2020

DISTRICT : PARBHANI

Rajendra s/o Baburao Kamble,)
Age : 56 years, Occu. : Service (as Subhedar,))
R/o. C/o : Shri Latne, Behind Parbhani)
District Jail, Jintur Road, District : Parbhani.)

.... **APPLICANT**

V E R S U S

1. The State of Maharashtra,)
(Through Secretary,)
Home Department, M.S., Mantralaya-32.)

2. The Addl. Director General & Inspector)
General of Prisons,)
Old Central Building, 2nd Floor, M.S.,)
Pune-01.)

3. The Dy. Inspector General of Prisons,)
Central Division, Aurangabad.)

... **RESPONDENTS**

APPEARANCE : Ms. Preeti Wankhade, Counsel for Applicant.

: Smt. M.S. Patni, Presenting Officer for
respondent authorities.

CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)

DATE : 16.02.2024

O R A L - O R D E R

1. Heard Ms. Preeti Wankhade, learned counsel appearing for the applicant and Smt. M.S. Patni, learned Presenting Officer appearing for respondent authorities.

2. By filing the present Original Application, the applicant is seeking quashing and setting aside the order dated 20.03.2012 (Annexure A-7) issued by respondent No. 3 and order dated 24.12.2012 (Annexure A-8) issued by respondent No. 2 thereby dismissing the appeal preferred by the applicant. The applicant is also seeking direction to the respondents to extend him all the consequential benefits including releasing of his yearly increments withheld pursuant to the impugned punishment order and extension of full pay and allowances for the total period of his suspension and treatment of whole period of suspension as his duty period for all purposes.

3. Brief facts as stated by the applicant giving rise to the Original Application are as follows :-

(i) The applicant had entered the service of respondent No. 1 in Home Department of Government of Maharashtra on 13.10.1983 as Peon and was promoted as Hawaldar on 18.10.2011 and further promoted as Subhedar on 06.04.2018 and since then, working as such.

(ii) It is the case of the applicant that in the year 2005, when he was working as Jail Guard in Nashik Road Central Prison, Nashik, the respondent No. 3 was pleased to

suspend 13 employees including the applicant in contemplation of the Departmental Enquiry on 06.06.2005. The said Departmental Enquiry was initiated and conducted and during pendency of Departmental Enquiry, all the delinquents were reinstated in service on 13.08.2009.

(iii) According to the applicant two charges were levelled against him in the Departmental Enquiry. The first charge alleged that the applicant has accepted bribe from one Mahesh Gokuldas Tanna, who was released from Nashik Road Jail, but had come in the Jail premises under the pretext that he wanted to open a soap manufacturing factory. He allegedly conducted a sting operation and sent the video recording to Star News Channel and it was shown in the Red Alert Programme representing that said Mahesh Gokuldas Tanna was giving money to all the jail officials. The second charge was that the applicant had not submitted return of assets and liabilities to the authorities before 17.08.2006 as required under Rule 19 of the Maharashtra Civil Services (Conduct) Rules, 1979 (for short, Rules of 1979).

(iv) It is the case of the applicant that in the meantime, FIR was lodged against in all 28 persons including the applicant in Nashik Road Police Station on the basis of the sting operation conducted by the former prisoner Mahesh Gokuldas Tanna. Subsequently, charge sheet came to be filed in the Court of Special Judge, Nashik. Learned Special Judge, Nashik by judgment and order dated 15.03.2010 has discharged all the accused persons including the applicant for the offences punishable under Sections 7, 12, 13(1)(d)(ii) of the Prevention of Corruption Act, 1988.

(v) The applicant contends that so far as Departmental Enquiry is concerned, the applicant has submitted his detailed explanation and the Enquiry Officer has completed the said D.E. and submitted his report to respondent No. 3 on 17.01.2007. The Enquiry Officer has held that the charge No. 1 is partially proved and the second charge was held to be fully/ completely proved against the applicant.

(vi) The applicant contends that in terms of the said findings recorded by the Enquiry Officer, respondent No. 3 issued final show cause notice of compulsory retirement to

the applicant on 06.08.2007 and the applicant has submitted his reply to the final show cause notice on 17.08.2007. The applicant contends that the charge No. 2 was added subsequently on 20.03.2007 i.e. almost 09 months after the first charge memo was issued. However, without considering anything including the discharge order passed by the learned Special Judge though brought to the notice of respondent No. 3, issued 02 orders on 20.03.2012 one imposing the punishment of stoppage of two increments of the applicant with permanent effect and secondly ordering that suspension period of the applicant to be treated as suspension only.

(vii) Being aggrieved by the same, the applicant has preferred an appeal before the respondent No. 2. However, the respondent No. 2 was pleased to confirm the order passed by the respondent No. 3 on 24.12.2012 dismissing the appeal preferred by the applicant (Annexure A-8). Hence, the present Original Application.

4. Learned counsel for the applicant submits that the impugned orders are arbitrary, irrational and illogical and as a result of total non-application of mind. Learned counsel submits

that there is no evidence on record of the DE on the basis of which the finding of guilt could be recorded against the applicant. Learned counsel submits that so far as charge No. 1 is concerned, the Enquiry Officer has held that the said charge has been partially proved, meaning thereby that the enquiry officer has also not arrived at clear decision about the guilt of the accused.

5. Learned counsel for the applicant submits that one of the co-delinquents from this DE Shri Santosh Kantrao Kulkarni had approached this Tribunal against the punishment appeal order by filing O.A. No. 542/2014, which was allowed by the judgment and order dated 11.11.2016. Being aggrieved by the same, the respondents preferred W.P. No. 15177/2017 against the order of Tribunal and by order dated 04.01.2018, the Hon'ble High Court of Bombay, Bench at Aurangabad had dismissed the said W.P. by confirming the order passed by the Tribunal.

6. Learned counsel for the applicant submits that 03 other co-delinquents from this DE viz. (i) Shri Naresh Khardekar, (ii) Shri Rajaram Kannewar and (iii) Shashikant Dive had approached this Tribunal against their punishment orders on the basis of the order of Shri Santosh Kantarao Kulkarni by filing

Original Applications bearing Nos. 387/2017, 597/2017 & 529/2017 respectively. During pendency of these Original Applications, the respondent No. 3 had quashed and set aside the punishment orders of these 03 persons. Consequently, the applicant has made representation on 17.07.2018 specifically praying for the same order. However, no order has been passed on the said application/representation. Learned counsel submits that for no reasons the discriminatory treatment has been given to the applicant. Learned counsel submits that the present Original Application deserves to be allowed with costs.

7. On the basis of the affidavit in reply filed on behalf of respondent Nos. 1 to 3, learned Presenting Officer submits that due to the sting operation, in which a video recording while accepting the bribe was telecasted on Star News under Red Alert Programme on 04.06.2005, the applicant came to be suspended. The initiation of the Departmental Enquiry against the applicant was due to the said sting operation carried out while taking the bribe and not submitting the return of his assets and liability to the authorities.

8. Learned Presenting Officer submits that the video recording, which was telecasted on Star News under Red Alert

Programme was shown to the applicant during the enquiry and he has accepted that he is present in that video recording wearing a khaki uniform. Learned Presenting Officer submits that due to the said incident of sting operation, the prison department faced a huge defamation. Learned P.O. submits that involvement of the applicant in the said sting operation cannot be said to be justifiable and certainly amounts to misconduct against the ethics and discipline. Learned P.O. submits that in the D.E. the applicant has accepted his delinquency that he did not submit the return of his assets and liabilities to the authorities, which is required to submit under Rule 19 of the Maharashtra Civil Services (Conduct) Rules, 1979.

9. Learned Presenting Officer submits that in the backdrop of these facts, the suspension period of the applicant cannot be treated as duty period, as the applicant is found guilty in the DE and the action to suspend the applicant cannot be considered as unjustified.

10. Learned Presenting Officer submits that so far as co-delinquent Shri Santosh Kulkarni is concerned, he was discharged from the criminal case and his Original Application No. 542/2014 came to be allowed by this Tribunal and the said

order was confirmed by the Hon'ble High Court of Bombay, Bench at Aurangabad in W.P. No. 15177/2017. Learned Presenting Officer submits that respondent No. 3 has also quashed and set aside the punishment orders of other three delinquents as detailed in the O.A., since they have presented the Original Applications before the Tribunal. Learned Presenting Officer submits that there is no substance in the present Original Application and the same is liable to be dismissed with costs.

11. In the facts of the present case, one Mahesh Gokuldas Tanna was arrested on 14.02.2004 under the provisions of Maharashtra Prohibition of Dangerous Activities Act and was initially detained in Central Jail, Thane. Thereafter, on 13.06.2004 he was transferred to Central Jail, Nashik Road, Nashik and was released on 04.05.2005 from Central Jail Nashik. After the release of said Mr. Mahesh Tanna and his associates, they indulged in carrying the sting operation on 31.05.2005. According to them, video recording by way of sting operation was telecasted on Star News under Red Alert Programme on 04.06.2005. After registration of FIR, the Anti-Corruption Bureau recorded statement of said Mr. Mahesh Tanna and others and after obtaining the necessary sanctions, prosecuted all the accused including the applicant.

12. It was the sting operation by a person having criminal antecedents, which was believed by the enquiry officer when no police agency is involved. Learned Special Judge Nashik by judgment and order dated 15.03.2010 discharged all the accused Nos. 1 to 28 including the applicant under Section 7, 12, 13(1)(ii) read with 13 (2) of the Prevention of Corruption Act, 1988 and further directed that the cassette be destroyed after appeal period is over.

13. On careful perusal of the enquiry report (Annexure A-4), it appears that the enquiry officer has concluded that the applicant himself has admitted that he himself is the person wearing uniform as shown in the video clip. The applicant has taken a specific defence that the said Mr. Mahesh Tanna handed over him the advertisement pamphlets and the applicant kept the same in his pocket. On the basis of evidence on record, the enquiry officer has concluded that it is not clear as to whether the said Mr. Mahesh Tanna has given money to the applicant or the advertisement pamphlet and as such, the video clip prepared by Mr. Mahesh Tanna is doubtful. However, it appears that without evidence on record and irrespective of the aforesaid observations, the enquiry officer on some extraneous evidence in this regard and in the light of the video clip pertaining to the

other delinquents accepting the amount has drawn an inference that the applicant might have accepted the amount from said Mr. Mahesh Tanna and accordingly considered that the said charge No. 1 has been partially proved against the applicant. The disciplinary authority has accepted the findings recorded by the enquiry officer without recording any reasons and merely stated in Annexure A-7 that the disciplinary authority has accepted the findings recorded by the enquiry officer. So far as charge No. 2 is concerned, admittedly no evidence is led by the department to substantiate the said charge.

14. It is necessary to repeat here again that even though the Criminal Court on the same facts has discharged the accused persons including the applicant by holding that the sting operation itself is doubtful and cannot be the basis of the prosecution of the accused persons under the provisions of Prevention of Corruption of Act, 1988 and even though the enquiry officer has recorded a confusing finding as partially proved to the extent of charge No. 1, the disciplinary authority has inflicted punishment on the applicant stopping two increments permanently. In my considered opinion, the said findings recorded by the enquiry officer and the punishment inflicted on the applicant on the basis of such findings indicates

non-application of mind on the part of the disciplinary authority, so also the appellate authority.

15. One co-delinquent Shri Santosh Kantrao Kulkarni has filed O.A. No. 542/2014 before this Tribunal. The said delinquent employee was also facing the similar charges as Charge Nos. 1 and 2. So far as charge No. 1 is concerned, this Tribunal has observed that the competent Special Judge on the same set of facts found that no case is made out against the accused to frame the charge and so far as charge No. 2 about purchase of certain properties without obtaining the permission from the higher authority, it is observed that the department did not examine any witness to prove the said charges against the applicant in the said O.A. Further this Tribunal has observed that Enquiry Officer seems to have appreciated the evidence in different manner and even the punishment imposed is also different in the same case for different delinquents. By the order dated 11.11.2016, this Tribunal allowed the said O.A. in terms of prayer clauses. The respondent State has filed W.P. No. 15177/2017 before the Hon'ble High Court of Bombay, Bench at Aurangabad against the said order of this Tribunal and by order dated 04.01.2018, the Division Bench of the Hon'ble High Court

has dismissed the said W.P. by confirming the order passed by this Tribunal.

16. In a case of **G.M. Tank Vs. State of Gujrat and Anr,** reported in **2006 DGLS (SC) 417**, wherein the Hon'ble Apex Court in para No. 28 has made the following observations :-

“28. In our opinion, such facts and evidence in the department as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though finding recorded in the domestic enquiry was found to be valid by the Courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony's case (supra) will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed.”

17. It is true that acquittal by a criminal court would not debar from exercising power to initiate departmental enquiry against the erring employees and acquittal by the Court does not *ipso facto* absolve the delinquent from the liability under the disciplinary jurisdiction of the employer. However, in the instant case, the departmental proceedings and the criminal case based on the identical and similar set of facts and charge in the DE

against the applicant and charge before the criminal court is one and the same. So far as criminal case is concerned, the Criminal Court has even observed that no case is made out to proceed against the applicant and other employees of the department as charge sheeted by the ACB and accordingly discharged all of them.

18. In Criminal case, so also, departmental proceedings, the primary evidence is video clip and the Criminal Court has considered that the video clip is not a conclusive piece of evidence. Even in the departmental proceedings, the enquiry officer has also come to the conclusion that the said video clip is suspicious clip, but still then recorded findings against the applicant as partly proved. As observed in the foregoing paragraphs, there is total non-application of mind by the enquiry officer, disciplinary authority and appellate authority.

19. Furthermore, the said video clip was shown in the Red Alert Programme of Star News. It is well settled that an electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under Section 65-B of the Evidence Act are satisfied. Thus, in the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in

terms of Section 65-B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is inadmissible. In view of the same, though no reference has been given to this particular settled view, the said video clip if produced in the proceedings is inadmissible. Even if this case is seen in every available angle, the punishment as inflicted on the applicant on the basis of the said findings cannot stand in the eyes of law. The same is thus liable to be quashed and set aside.

20. It further appears that the disciplinary authority by separate order dated 20.03.2012 in terms of Rule 72(1)(a)(b) of the Maharashtra Civil Services (Joining Time, Foreign Services and Payment During Suspension, Dismissal and Removal) Rules, 1981 has directed that the pay and allowance to which he would have been entitled, had he not been suspended and the same shall not be less in terms of the provisions of Rule 68 of the said Rules of 1981, which prescribes subsistence allowances during suspension. It is further stated that the period of suspension shall not be treated as a period spent on duty.

21. It appears that the said order has been passed in terms of Rule 72 (5) and (7) of the MCS Rules, 1981. In terms of

the order passed by the Criminal Court dated 15.03.2010 in Special Case No. 07/2008 and since the findings recorded by the enquiry officer and the punishment inflicted on the applicant in this regard and the order passed by the appellate authority have been found to be not in accordance with the law, the suspension order of the applicant appears to be wholly unjustified and as such, the period of suspension of the applicant is required to be treated as a period spent on duty for all purposes and the applicant is entitled for full pay and allowances to which he would have been entitled, had he not been suspended.

22. In view of the discussions in foregoing paragraphs, the present Original Application deserves to be allowed. Hence, the following order :-

ORDER

(i) The Original Application is hereby allowed in terms of prayer clause 13 (B) and (C), which is as follows :-

“13) B) This Original Application may kindly be allowed thereby quashing and setting aside the impugned orders dtd. 20/03/2012 (Annex. A-7 Colly.) issued by Resp. No. 3 and the order dtd. 24/12/2012 (Annex. A-8) issued by Resp. No. 2 dismissing the Appeal.

C) This Original Application may kindly be allowed thereby further directing the Respondents to extend to the

applicant all the consequential benefits to which he could be entitled in view of grant of Prayer Clause "A and B" in his favour i.e. the Respondents be directed to undo all the actions taken by them consequent to the impugned orders and extend all financial benefits to the applicant including releasing of his yearly increments withheld pursuant to the impugned punishment order and extension of full pay & allowances for the total period of his suspension and treatment of that whole period of suspension as his duty period for all purposes."

- (ii) In the circumstances, there shall be no order as to costs.
- (iii) The Original Application is accordingly disposed of.

PLACE : Aurangabad.
DATE : 16.02.2024

(Justice V.K. Jadhav)
Member (J)

KPB S.B. O.A. No. 87 of 2020 VKJ Minor Punishment / suspension period.