

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 704 OF 2013

DIST. : AHMEDNAGAR

Sukhdeo s/o Kishan Garje,
 Age. 56 years, Occ. Service,
 R/o Loni, Tq. Loni,
 Dist. Ahmednagar.

-- APPLICANT.

V E R S U S

1. The State of Maharashtra,
 Through P.O., M.A.T.,
 Aurangabad.
 (Copy to be served on P.O.
 M.A.T., Aurangabad)

2. The Director General of Police,
 Maharashtra State, Mumbai.

3. The Special Inspector of
 General of Police,
 Nashik Region, Nashik.

4. The Superintendent of Police,
 Ahmednagar.

-- RESPONDENTS

APPEARANCE : Shri L.M. Kulkarni, learned Advocate for
 the Applicant.

: Smt. Priya R. Bharaswadkar, learned
 Presenting Officer for the Respondents.

CORAM : Hon'ble Shri Rajiv Agarwal, Vice Chairman
A N D

Hon'ble Shri J.D. Kulkarni, Member (J)
DATE : 20.10.2016

JUDGMENT

{PER : HON'BLE SHRI J.D. KULKARNI, MEMBER (J)}

1. The applicant in this O.A. – Shri Sukhdeo s/o Kishan Garje – is a Police Constable and was recruited in the year 1983 after following due process of selection. While serving at Police Station, Loni, the applicant sustained heart attack and he was immediately admitted in the hospital and was advised to undergo angioplasty. He, therefore, applied for medical leave from 26.10.2010 and he had undergone angioplasty operation on 1.11.2010. After angioplasty he was further advised to take rest for the period from 4.11.2010 to 3.12.2010.

2. On 24.11.2010, the applicant along with his relatives had been at Cattle Bazar of Loni for purchasing a cow and after negotiation, the applicant purchased a cow from one Shri Akbar Ibrahim Shaikh for amount of Rs. 18,000/- and also obtained a receipt. At that time, Shri Sawant, P.S.I. came with other Police Constables at the said Cattle Bazar and without making any formal enquiry, started searching the applicant and seized Rs. 4,275/- from applicant. On 25.11.2010, the res. no. 4 kept the applicant under suspension on the report of P.S.I. The preliminary enquiry was also initiated against the applicant.

3. On 1.4.2011, a departmental enquiry was initiated against the applicant by res. no. 4 – the Superintendent of Police, Ahmednagar. On 15.2.2012, enquiry report was submitted by the Enquiry Officer to the res. no. 4 and on the basis of the said enquiry report the res. no. 4 awarded punishment of reversion to the applicant. The final order, on the basis of the said enquiry report, was passed by res. no. 4 on 23.5.2012, which reads as under :-

“आदेश :-

मी, कृष्ण प्रकाश, पोलीस अधीक्षक, अहमदनगर या आदेशाद्वारे मुंबई पोलीस (शिक्षा आणि अपिले) नियम १९५६ चे नियम क्रं. ३ (१) (१) अन्वये प्रदान केलेल्या अधिकाराचा वापर करून, पोह/१६९९ सुखदेव किसन गर्जे, नेम.पोलीस मुख्यालय, अहमदनगर यांना “पोलीस नाईक पदावर दोन वर्षाकरीता पदावनत करणे” शिक्षा करित आहे.

कसूरदार यांना सदर आदेशाविरुद्ध अपिल करावयाची इच्छा असेल, तर ते हा आदेश प्राप्त झाले दिनांकापासून ६० दिवसांचे आत पोलीस महानिरीक्षक, नाशिक परिक्षेत्र, नाशिक यांना या कार्यालयाचे मार्फतीने अपिल अर्ज सादर करू शकतात.”

4. The applicant preferred an appeal against the said order of punishment of reversion to the res. no. 2 – the Director General of Police, M.S., Mumbai. The appellate authority, however,

maintained the order of punishment issued by res. no. 4 and, therefore, the applicant has filed this O.A.

5. The applicant has prayed that the order passed by the res. no. 2, the Director General of Police, M.S., Mumbai, thereby maintaining the order passed by the res. no. 4, the Superintendent of Police, Ahmednagar, reverting the applicant on the post of Police Naik for 2 years, be quashed and set aside.

6. The respondents resisted the claim by filing their affidavits in replies and submitted that, due enquiry was conducted against the applicant and he was found guilty of collecting money from the Drivers / vehicle owners at the Loni Cattle Bazar. It is stated that the applicant was on medical leave and there was no necessity for him to go personally to Loni Cattle Bazar. There was complaint that the applicant was collecting money from Drivers / vehicle owners at Loni Cattle Bazar and the amount and receipt book which was in possession of the applicant was also seized.

7. Heard Shri L.M. Kulkarni, learned Advocate for the Applicant and Smt. Priya R. Bharaswadkar, learned Presenting Officer for the Respondents. We have also perused the affidavit, affidavit in replies and various documents placed on record.

8. The material point to be considered in this O.A. is whether the impugned orders, whereby the applicant has been reverted are legal and proper ?

9. The learned Advocate for the applicant submits that it is a case of no evidence and, therefore, the Tribunal can appreciate the evidence available on record. The charge with which the applicant has been served in the departmental enquiry is at page 35 of the paper book. The said charge reads as under :-

“दोषारोप :-

अत्यंत बेशिस्त, बेजबाबदार, निष्काळजी, हेकट, भ्रष्टाचारी व हलगर्जीपणाचे वर्तन जे की, तुम्ही पोह/१६९९ सुखदेव किसन गर्जे (सध्या निलंबित) लोणी पो.स्टे. येथे नेमणुकीस असतांना, दिनांक २६.१०.१० रोजी पासुन वैद्यकीय रजेवर असतांना दिनांक २४.११.२०१० रोजी १२.४५ वा. चे सुमारास पो उप नि सावंत, विशेष पोलीस पथक, हे राहुरी पो. स्टे. हद्दीत अवैध धंद्याबाबत माहिती काढत असतांना त्यांना बातमीदारा मार्फत बातमी मिळाली की, तुम्ही पो ह/१६९९ सुखदेव किसन गर्जे लोणी पोस्टे हद्दीत लोणी येथील आठवडे बाजारचे दिवशी जनावरांचे बाजारतळाच्या समोर रोडवरून जाणारे - येणारे वाहन चालकांकडून पैसे गोळा करीत आहेत असे समजल्याने पोडनि सावंत व त्यांचे पथक बातमीतील ठिकाणी १४.०० वा. चे सुमारास गेले त्यावेळी तुम्ही रोडवर हातात काठी घेवुन संशयीत रित्या मिळुन आलात. त्यावेळी तुमचेकडे मोटार वाहन कायदयान्वये कारवाई करावयाचे छापील फॉर्मचे पुस्तक व रोख रक्कम ४,२७५/- तुमचे ताब्यात मिळुन आली.

अशाप्रकारे तुम्ही अत्यंत बेशिस्त, बेजबाबदार, हेकट, दुराग्रही, भ्रष्टाचारी, स्वरूपाचे वर्तन केले म्हणुन दोषारोप.

सहि/---
(व्ही.जी.तांबे)
विभागीय वौकशी अधिकारी,
तथा, पोलीस निरीक्षक,
संगमनेर ता. पो.स्टे.”

10. According to the learned Advocate for the applicant, it is alleged that some complaint was received against the applicant on the basis of which, the applicant was raided at Loni Cattle Bazar, however, the person, who alleged to have given complaint is not examined by the prosecution. The name of the person, who filed complaint against the applicant, was also not mentioned and, therefore, it is not known that as to on whose complaint the entire process of search was carried out at Loni Cattle Bazar. The learned Advocate for the applicant further submits that, there is no evidence at all against the applicant, whereby it can be said that, the alleged charge against the applicant has been proved. On the contrary, right from the beginning, the applicant had taken defence that, he was at Loni Cattle Bazar for purchasing a cow and he had purchased a Cow.

11. Perusal of the charge shows that the res. no. 4 – the Superintendent of Police, Ahmednagar – has received some complaint against the applicant, but the name of the complainant is not submitted to the applicant. It is stated that,

confidential information was received to the effect that the applicant was collecting money illegally from the Drivers / vehicle owners at Loni Cattle Bazar and the applicant was seen with a stick (Lathi) in his hand at the said Bazar. He was also possessing printed receipt book and cash of Rs. 4,275/-.

12. Generally and normally the Tribunal mat not appreciate the evidence in the departmental enquiry, but the learned Advocate for the applicant submits that, it is a case of no evidence at all and, therefore, it was necessary to consider whether there is even no prima-facie evidence against the applicant. It is material to note that the so called complainant in this case is also not examined and even his name is not disclosed and, therefore, it is not known as to from whom the res. no. 4 - the Superintendent of Police, Ahmednagar – received the complaint against the applicant, as alleged.

13. In order to prove the claim, the department has examined number of witnesses and the said witnesses are Shri Chandrashekhar Vitthalrao Savant, Police Sub Inspector, Smt. Kalpana Balasaheb Arwade, Police Constable, Shri Digambar Raosaheb Carkhele Police Constable, Shri Rajendra Ramchandra Kale, Police Constable, Shri Madhukar S. Shinde, Police

Constable, Shri Avinash A. Barde, Police Constable, Shri Sachin Mahadeo Jadhav, Police Constable, Shri Sudhir Sudhakar Kshirsagar, Police Naik, Shri Shaikh Ayub Maheboob, Police Head Constable, Shri Ganesh Ramdas Chavan, Police Constable, Shri Kalyan Trimbak Gade, Police Naik, Shri Dattatraya Keshav Rajguru, Watchman, who witnessed on panchnama, one Shri Shivaji Changdeo Ghorpade, Watchman, who witnessed on panchnama, Shri Sunil B. Godse, Dy. S.P., Shri Suresh Varade, Police Inspector.

14. It is material to note that all above witnesses have not disclosed anything indiscriminating against the applicant. None of the prosecution witness witnessed the applicant accepting the money from the Drivers of the vehicle / vehicle owners. They have admitted in clear term that, applicant disclosed that, he had been in Loni Cattle Market for purchasing a cow and that he had purchased a cow. The applicant also admitted that he was having money and wanted to deposit the same in the Bank. Thus, it is clear that the applicant was not seen collecting the money from any vehicle owners or Drivers. No witness has been examined in the departmental enquiry to show that the applicant collected money from any vehicle owners / Drivers illegally and

the person who alleged to have given the said information is also not examined by the Department.

15. Merely because the applicant was searched in the Loni Cattle Bazar and in his personal search some cash was found along with receipt book, it cannot be said that the applicant was collecting money from the Drivers / Vehicle owners illegally. The muddemal ceased from the applicant was not produced before the Enquiry Officer and most important thing is that it is not known as to whether the receipt book was having receipts of collections of amount illegally from the vehicle owners / Drivers.

16. Considering the evidence as we have appreciated, we feel that, it is a fit case where the appreciation of evidence is necessary, since even from accepting entire evidence of all the witnesses, it cannot be said that the applicant was collecting money illegally from the vehicle owners / drivers at Loni Cattle Bazar. We are, therefore, satisfied that it is a case where there is no evidence at all and on the contrary almost all the witnesses have accepted the defence that the applicant had been to Loni Cattle Bazar for purchasing a cow. No criminal case has been filed against the applicant.

17. Considering the aforesaid facts, we are satisfied that the Enquiry Officer while conducting the departmental enquiry against the applicant, the res. no. 4 i.e. the Superintendent of Police, Ahmednagar and has not applied his mind and did not appreciate evidence properly while passing the reversion order against the applicant. The appellate authority i. e. the res. no. 2 – the Director General of Police, M.S., Mumbai – while upholding the order of reversion issued by res. no. 4, has also not applied its mind to the evidence on record. On the contrary, both the authorities accepted the evidence which seems to be perverse on the fact of the record. Therefore, we are satisfied that it is a case of no evidence. The impugned orders of punishment, thus, are illegal and not supported by any evidence and, hence, are required to be quashed and set aside. In view thereof, we pass following order :-

ORDER

- (i) The O.A. stands allowed.
- (ii) The impugned order of punishment in the D.E. dated 23.5.2012 passed by the res. no. 4, the Superintendent of Police, Ahmednagar, and the order passed by res. no. 2, the Director General of Police,

M.S., Mumbai, thereby confirming the order passed by res. no. 4 are quashed and set aside.

- (iii) The applicant stands exonerated from the charge alleged to have been proved in the departmental enquiry. His reversion from the post of Police Constable to Police Naik is thus quashed and set aside.

There shall be no order as to costs.

MEMBER (J)

VICE CHAIRMAN