

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 28 WITH 938 OF 2018

DISTRICT : SANGLI

1) ORIGINAL APPLICATION NO. 28 OF 2018

Shri Dnyaneshwar Laxman Awate,)
Occ : Police Sub Inspector,)
Wada Taluka Police Station,)
Dist-Palghar, [Under suspension],)
R/o: A/P Yelvi, Tal-Jath, Dist-Sangli.)...**Applicant**

Versus

1. The Special Inspector General of)
Police, Konkan Range,)
Navi Mumbai, having office at)
Konkan Bhavan, C.B.D, Belapur,)
Navi Mumbai.)
2. The Superintendent of Police,)
Palghar, having office at Palghar.)
3. The State of Maharashtra,)
Through the Principal Secretary,)
Mantralaya, Mumbai 400 032.)...**Respondents**

2) ORIGINAL APPLICATION NO. 938 OF 2018

Shri Dnyaneshwar Laxman Awate,)
Occ : Police Sub Inspector,)
Wada Taluka Police Station,)
Dist-Palghar, [Under suspension],)
R/o: A/P Yelvi, Tal-Jath, Dist-Sangli.)...**Applicant**

Versus

1. The Special Inspector General of)
Police, Konkan Range,)
Navi Mumbai, having office at)
Konkan Bhavan, C.B.D, Belapur,)
Navi Mumbai.)
2. The Superintendent of Police,)
Palghar, having office at Palghar.)
3. The State of Maharashtra,)
Through the Principal Secretary,)
Mantralaya, Mumbai 400 032.)...**Respondents**

Shri A.V Bandiwadekar, learned advocate for the Applicant.

Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents.

CORAM : **Shri Shree Bhagwan (Vice-Chairman) (A)**
Shri A.P Kurhekar (Member)(J)

RESERVED ON : **19.09.2019**

PRONOUNCED ON : **16.11.2019**

PER : **Shri Shree Bhagwan (Vice-Chairman) (A)**

ORDER

1. Heard Shri A.V Bandiwadekar, learned advocate for the Applicant and Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents

2. In both the Original Applications, the applicant is same and the grievances are connected, so redressal will be also the same. Hence both the Original Applications are heard together and decided by this common judgment.

3. As submitted by the learned Counsel for the applicant, applicant was born on 10.6.1987. He is B.A by qualification. Admittedly, the applicant was appointed as a Cadet Training P.S.I by way of direct nomination as Probationary P.S.I vide order dated 5.11.2012 (pages 256 to 284 both inclusive) of O.A.No.28 of 2018 by the D.I.G of Police and Deputy Director, Maharashtra Police Academy, Nasik (hereinafter referred as MPA order).

4. In the MPA order dated 5.11.2012, certain terms and conditions are mentioned. In para 2.5 (I), it is mentioned that if training is not satisfactory, the D.G.P., M.S, Mumbai, can extend the probation period up to six months. In the same para 2.6 (II), it is also mentioned that in the said extended period of six months, D.G & I.G.P, M.S, can take any action including terminating/cancelling the appointment of any candidate. In para 2.6 it is also mentioned that candidates till their probation period in Maharashtra Police Academy any officer parallel to D.I.G or above him, that is Deputy Director of Maharashtra Police Academy will be treated as Appointing Authority.

5. Subsequently, after successful completion of training period, the applicant was appointed to the post of P.S.I by the Director General of Police, M.S, Mumbai by order dated 26.2.2015, (Exh. B, pages 24 to 26 in O.A. No.28 of 2018). With the above discussion it is clear that till the candidates remain under training in the Maharashtra Police Academy, their appointing authority is treated equivalent to Dy. Director of Academy, i.e. D.I.G rank Officer in Police Department of DIG rank officer in Police Department and above DIG rank in Police Department.

6. However, once they are appointed after successful completion of training, their final appointment is done by the Director General and Inspector General of Police, M.S, Mumbai and so after this appointment their appointing authority becomes the D.G & Inspector General of Police, M.S, Mumbai.

7. A charge sheet was served against the applicant by the Superintendent of Police, Palghar and as per Annexure-I of the charge sheet, page 33, six charges were levelled against the applicant, which reads as under:-

“दोषारोपपत्र

तुम्ही, निलंबित पोलीस उपनिरीक्षक, ज्ञानेश्वर लक्ष्मण आवटे, तत्का नेम.वाडा पो ठाणे निलंबन हजेरी घोलवड पो ठाणे यांनी त्यांचेवडील वाडा पो ठाणे गुरनं 1 933/2099, भादविसक 820, 806, 808, 869, 867, 868, 809, 38 या गुन्ह्याचे तपासी अधिकारी असताना त्यांचे विरुद्ध ठाणे शहर अंतर्गत कळवा पो ठाणे गुरनं 11 929/2099, ला.लु.प्र.का.सन 9988 चे कलम 9, 93 (9) (ड) सह 93 (2) अन्वये गुन्हा नोंद करण्यात आलेला आहे. तुम्ही खालील प्रमाणे शिस्तभंगाची कसुरी केलेली आहे.

9. वाडा पो ठाणे गुरनं 1 933/2099, भादविसक 820, 806, 808, 869, 867, 868, 809, 38 या गुन्ह्याचे तपासी अधिकारी असताना दि. 2/9/2099 रोजी तुम्ही सादर केलेल्या केस डायरी क्रं. 28 वर उपविभागीय पोलीस अधिकारी, जवहार यांनी लिहिलेल्या शे-यामध्ये सादर गुन्ह्यात भादविसक 920 (ब) लावणेबाबत सहा सरकारी अभियोक्ता यांचा अभिप्राय प्राप्त करून गुन्ह्यास वाढीव कलम लावावे असे आदेश दिलेले असतानाही तुम्ही तसे केलेले नाही.
2. वाडा पो ठाणे गुरनं 1 933/2099, भादविसक 820, 806, 808, 869, 867, 868, 809, 38 या गुन्ह्याचे तपासी अधिकारी असताना सादर गुन्ह्यातील एक आरोपी शंकर रेडडी यांची पत्नी सौ. मधुमती शंकर रेडडी, व्यवसाय-शिक्षिका, रा-हरी ओम व्हॅली, टिटवाळा (पुर्व), ता-जि- ठाणे यांचे निवासस्थानी दि. 6/9/2099 रोजी तसेच दि. 9/9/2099 रोजी पहाटे 09.00 वा दोन कर्मचा-यासह साध्या वेषात जाऊन त्यांचा पतीचा फोटो त्यांचेकडे मागितला व शंकर रेडडी हा आरोपी असल्याबाबत सादर फोटो व्हॉट्स अॅपवर व बॅनर बनवून सगळीकडे चिकटवणार असल्याची त्यांना तिचे वडिलासमोर धमकी दिली.
3. सादर महिला सौ. मधुमती शंकर रेडडी हिचेशी तुम्ही उध्दटपणे व अपमानास्पद भाषा वापरून व तुमच्या पदाचा दुरुपयोग करून तिला तिचा नवरा आरोपी असलेबाबत गाडीचा सायरन वाजवून ज्यांना माहिती नाही त्यांना माहिती करून देईन अशी धमकी दिली.
4. तुम्ही गुरन 1 933/2099 मधील तक्रारदार श्री.उदय जोशी यांचेकडून आरोपीच्या जामीनासाठी न्यायालयात जाण्या येण्याचा खर्च वसुन केला.
5. दि. 9/9/2099 रोजी तुम्ही गुरन 1 933/2099 मधील तक्रारदार श्री. उदय जोशी यांनी तुम्हास फोन करून कळवा नाका येथे येऊन भेटण्यास बोलविले असता तुम्ही त्यांना सादर ठिकाणी अंतःस्थ हेतुने त्यांची भेट घेतली.
6. तुमचे विरुद्ध एसीबीचा गुन्हा नोंद झाल्याने तुम्ही पोलीस दलाची प्रतिमा मलीन करण्यास व पोलीस खात्याची बदनामी होण्यास कारणीभूत ठरला आहात.”

(Quoted from page 33 of the O.A)

It is seen that out of above six charges the sixth charge is regarding A.C.B and i.e. continued in Court.

8. The impugned order dated 18.12.2017, Exh. A, page 21 in O.A. No.28 of 2018 was issued by the Special I .G.P, Konkan Division. The submission of learned counsel for the applicant is that in said show cause notice it is mentioned at page 23 that Special I.G.O is competent

authority for dismissing the applicant from service, which is contrary to established law.

9. This Original Application was heard on 10.1.2018. In the said order, in para 11 interim relief was granted to the applicant. The main relief sought in para 9(a) & (b) by applicant at page 18 of the O.A is against the show cause notice issued on 18.12.2017.

10. Respondents no 1 & 2, i.e. Special I.G.P, Konkan Division and S.P, Palghar have filed their reply. While filing reply, in para 8 of the reply discussion about appointment of the applicant as Cadet Training P.S.I by the Officer of the rank of D.I.G and Dy. Director, Maharashtra Police Academy, Nasik by order dated 5.11.2012 is mentioned and they have interpreted that appointing authority for P.S.I is D.I.G or any officer above the rank of D.I.G. Police. They have ignored the terms and conditions mentioned in letter dated 5.11.2012 under condition no. 2.5. (I) and 2.6 and also subsequent appointment letter issued by the D.G.P dated 26.2.2015, Exh. B, page 24.

11. As per Article 311 of the Constitution of India, Dismissal, removal or reduction in rank of persons employed in civil services under the Union or a State, no person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed. In the present case, the Special I.G.P, has interpreted the order of Deputy Director/D.I.G of Police dated 5.11.2012 as the appointing authority and accordingly it has been interpreted that Special I.G.P, Konkan Division is the competent authority.

12. However, as discussed in para 2.5 (I) and (II) of the letter (MPA letter dated 5.12.2019), the appointing authority of P.S.I remains equivalent to D.I.G or any officer above D.I.G, i.e. equivalent to Deputy Director, Maharashtra Police Academy only till the candidate remains in Maharashtra Police Academy. Once the candidate completes the

successful training and appointed in a regular post of P.S.I as per order dated 26.2.2015, Exh. B, page 24, Director General of Police, M.S, Mumbai becomes the appointing authority and competent authority for dismissal of Police Sub Inspector from service and for all other purposes of role of appointing authority also.

13. Learned Counsel for the applicant has also relied upon Section 25 of the Maharashtra Police Act, which is reproduced below:-

25. Punishment of the members of the subordinate ranks of the Police Force departmentally for neglect of duty, etc. –

[(1) The State Government or any officer authorised under sub-section (2), in that behalf, may impose upon an Inspector or any member of the subordinate ranks of the Police Force, who in the opinion of the State Government or such authorised officer, is cruel, perverse, remiss or negligent in, or unfit for, the discharge of his duties, any one or more of the following penalties, namely

(a) recovery from pay of the whole or part of any pecuniary loss caused to Government on account of the negligence or breach of orders on the part of such Inspector or any member of the subordinate rank of the Police Force;

(b) suspension;

(c) reduction in rank, grade or pay, or removal from any office of distinction or withdrawal of any special emoluments;

(d) compulsory retirement;

(e) removal from service which does not disqualify for future employment in any department other than the Police Department;

(f) dismissal which disqualifies for future employment in Government service:

Provided that, suspension of a police officer pending an inquiry into his conduct or investigation of a complaint against him of any criminal offence shall not be deemed to be a punishment under clause (b).

(1A) The State Government or any officer authorized under sub-section (2) in that behalf, may impose upon an Inspector or any member of the subordinate ranks of the Police Force, who is guilty of any breach of discipline or misconduct or of any act rendering him unfit for the discharge of his duty which, in the opinion of the State Government or of such authorized officer, is not of such nature as to call for imposition of any of the punishments referred to in sub-section (1), any one or more of the following punishments, namely

- (a) warning;
- (b) a reprimand (to be entered in his service book);
- (c) extra drill;
- (d) fine not exceeding one month's pay;
- (e) stoppage of increments :

Provided that, the punishment specified, -

- (i) in clause (c), shall not be imposed upon any personnel above the rank of Constable;
- (ii) in clause (d), shall not be imposed upon an Inspector.]

Punitive powers of [Director-General and Inspector-General], Commissioner, Deputy Inspector-General [(including Director of Police Wireless)] and [Superintendent] [and Principal of Training Institution]

[(2) (a) The Director General and Inspector General including Additional Director General, Special Inspector General, Commissioner including Joint Commissioner, Additional Commissioner and Deputy Inspector-General shall have authority to punish an Inspector or any member of the subordinate rank under sub-section (1) or (1A). A Superintendent shall have the like authority in respect of any police officer subordinate to him below the grade of Inspector and shall have powers to suspend an Inspector who is subordinate to him pending enquiry into a complaint against such Inspector and until an order of the Director-General and Inspector-General or Additional Director-General and Inspector-General and including the Director of Police Wireless and Deputy Inspector-General of Police can be obtained.]

(b) The Principal of [a Police Training College] shall also have the like authority in respect of any member of the subordinate ranks of the Police Force below the grade of Inspector [undergoing training at [such [College] or] serving under him], and in respect of head constables and constables belonging to the Police Force of [the District in which such [College] is situated] or of any other district attached to [such [College] for duty under him]. [He may also suspend an Inspector who is [undergoing training at [such [College] or] subordinate to him pending inquiry inters complaint against such Inspector] and until an order of the [Director-General and Inspector-General] or Deputy [Director-General and Inspector-General] can be obtained.]

[(ba) The Principal of a Police Training School shall have the like authority in respect of any member of the subordinate ranks

of the Police Force below the grade of an Inspector, undergoing training at such school or serving under him, or attached to such school for duty under him.]

[(bb) *****]

(c) The exercise of any power conferred by this sub-section shall be subject always to such rules and orders as may be made by the State Government in that behalf.

(3) Nothing in [sub-sections (1), (1A)] and (2)-

(a) shall affect any Police Officer's liability to a criminal prosecution for any offence with which he may be charged; or

(b) shall entitle any authority subordinate to that by which the Police Officer was appointed, to dismiss or remove him.

14. As mentioned in Section 25 3(b) of the Maharashtra Police Act, any officer shall entitle any authority subordinate to that by which the police officer was appointment to dismiss or remove him.

15. In view of this position, it is very clear that the impugned order is not passed by the appointing authority, but by the authority who is not competent to pass the said order.

16. The Advocate Shri A.V. Bandiwadekar for the Applicant placed reliance on the decision of the Hon'ble Supreme Court in **AIR 1979 SC 1912 Krishna Kumar Versus The Divisional Assistant Electrical Engineer, Central Railway and others**, wherein the Hon'ble Supreme Court laid down the ratio that removal of services by the authority subordinate to the appointing authority is not legal and valid in view of Article 311(1) of the Constitution of India. Paragraphs 4 and 7 of the judgment is relevant for this purpose, which are as follows :-

"4. Article 311 (1) of the Constitution provides that no person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed. The simple question for determination is whether, as alleged by the appellant, he was removed from service by an authority subordinate to that which had appointed him. The relevant facts are but these are these only. The appellant was appointed as a Train Lighting Inspector under an order issued by the Chief Electrical Engineer and was removed from service under an order passed by the Divisional

Assistant Electrical Engineer, Central Railway, Nagpur. The narrow question, therefore, for consideration is whether the Divisional Assistant Electrical Engineer is subordinate in rank to the Chief Electrical Engineer. None of the affidavits filed by Shri Sarathy, who passed the order of removal says that the post of Divisional Assistant Electrical Engineer is equivalent to that of the Chief Electrical Engineer in the official hierarchy. That the former is not higher in rank than the latter is self-evident. In the circumstances, it seems clear that the appellant was removed from service by an authority which is subordinate in rank to that by which he was appointed.

7. Since the appellant was appointed by the Chief Electrical Engineer and has been removed from service by an order passed by respondent 1 who, at any rate, was subordinate in rank the Chief Electrical Engineer on the date of appellant's appointment, it must be held that respondent 1 had no power to remove the appellant from service. The order of removal is in patent violation of the provisions of Article 311 (1) of the Constitution."

17. Whereas learned P.O. for the Respondents referred to the decision of Hon'ble Supreme Court in **Civil Appeal No.10831 of 2010, decided on 24.01.2017, Special Inspector General of Police & Ors. Vs. Ambadas Hariba Yadav**. However, in our respectful opinion the present judgment is of little assistance to the learned P.O. in view of specific bar of Section 25(3)(b) of the Maharashtra Police Act, reproduced above. As such in the above facts and circumstances of the present case Respondent No.1 cannot be said legally competent to dismiss the applicant.

18. Indeed there is clear admission of the Respondents in O.A.No.409 of 2018. In the said O.A. the Home Department had filed affidavit (page 280 and 281 of the O.A.No.938 of 2018), wherein the Home Department clearly admits that PSI is the post of Group B (non-gazetted) and the appointing authority of the said post is Director General and Inspector General of Police, Maharashtra State.

19. In view of the aforesaid discussion, in our considered opinion the impugned order dated 26.02.2015 in O.A.No.28/2018 and the impugned order dated 01.09.2018 in O.A.No.938 of 2018 are clearly unsustainable in law, in view of specific bar of Section 25(3)(b) of Maharashtra Police Act read with Article 311(1) of the Constitution of India.

20. Resultantly, both these orders deserve to be quashed and set aside with liberty to the Respondents to pass order afresh in accordance with law.

21. Hence the following order:-

ORDER

1. Original Application nos. 28/2018 and 938/2018 are allowed.
2. The impugned order dated 26.2.2015, at Exh. B, page 24 in O.A 28/2018 and the impugned order dated 1.9.2018, at Exh. A, page 45, in O.A 938/2018 are quashed and set aside.
3. The Appointing Authority is, however, at liberty to pass order afresh in accordance to law.
4. No order as to costs.

SD/-
(A.P Kurhekar)
Member (J)

SD/-
(Shree Bhagwan)
Vice-Chairman (A)

Place : Mumbai
Date : 16.11.2019
Dictation taken by : A.K. Nair.