

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 295 OF 2018

DISTRICT : MUMBAI

Smt. Vaibhavi Vishwas Harne)
Working as Senior Police Inspector,)
Attached to S.B [1], C.I.D,)
Having office at C.S.T, Mumbai-1.)
R/o: G/6, New Mahesh Villa Apartment)
Near Bhavan's college, Andheri [W],)
Mumbai 400 058.)...**Applicant**

Versus

1. The Joint Commissioner of Police,)
[Law & Order], in the office of)
Commissioner of Police,)
Brihanmumbai, having office)
At L.T Marg, Opp. Crawford)
Market, Fort, Mumbai 400 001.)
2. The State of Maharashtra,)
Through Dr. Ranjeet Patil,)
Hon'ble Minister of State for)
Home [Cities], having office at)
Mantralaya, Mumbai 400 032.)...**Respondents**

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

Ms Archana B.K, learned Presenting Officer for the Respondents.

CORAM : Shri A.P Kurhekar (Member)(J)

DATE : 09.01.2020

J U D G M E N T

1. The applicant has challenged impugned order dated 24.11.2017 passed by Respondent no. 2, thereby imposing punishment of strict warning (सक्त ताकीद) by setting aside the order of punishment imposed by the Disciplinary Authority whereby two increments were withheld without cumulative effect.

2. Shortly stated facts giving rise to the Original Application are as under:-

- (a) The applicant is Senior Police Inspector and presently attached to S.B-I, C.I.D, having office at C.S.T, Mumbai.
- (b) In Bandra Kurla Complex Police Station, offence vide Crime No. 89/2014 for the offences under Sections 409, 420, 465, 468, 471, 477-A, 420B, 34 of IPC read with Sec 66(a)(d) of Information and Technology Act was registered against accused namely, Shri Sandeep Mendiratta and others on the complained lodged by Shri Harsh Malhotra.
- (c) The investigation of the said crime was entrusted to the applicant. While the applicant was investigating the said crime, Shri Ajay Agarwal, Advocate of Shri Sandeep Mendiratta lodged complaint with Commissioner of Police, Mumbai on 6.4.2015 alleging that the applicant is trying to frame his client Shri Sandeep Mendiratta in a fabricated case and applicant had hand in gloves with complainant Shri Harsh Agarwal. He alleged that applicant used wrong report to deny anticipatory bail to Shri Sandeep Mendiratta and further alleged that he is in loop with the complainant Shri Harsh Malhotra. He thus alleged that the investigation is biased and requested the Commissioner of Police, Mumbai to inquire into the matter and take suitable action against the applicant.

3. The said complaint was entrusted to Shri Wakde, Additional Commissioner of Police, Mumbai to conduct preliminary enquiry and to submit report. Accordingly, Shri Wakde, Additional Commissioner of Police, Mumbai conducted preliminary enquiry, during course of which he has recorded statements of Shri Sandeep Mendiratta, applicant as well as Police Constables. At the end of enquiry, he came to the conclusion that applicant is guilty of certain lapses which are as under:-

4. Besides, Shri Wakde, Additional Commissioner of Police, Mumbai, also found that Police Constables, namely, Shri Kamble, Shri Rane and Shri Jadhav were also guilty of certain lapses which are as under:-

श्रीमती वैभवी हर्णे, पोलीस निरीक्षक, बी.के.सी. पोलीस ठाणे यांनी केलेली कसुरी :-

१. आरोपी संदिप मेंदिरत्ता हा पाहिजे आरोपी असताना दोषारोप पत्रामध्ये त्यास फरार म्हणून घोषित केले.
२. मपोनि. हर्णे यांनी पो.शि.क्र.०९-३२०५ / विशाल थोरात यांच्याशी श्रीमती नमिता मेंदिरत्ता यांच्या मोबाईल फोनवर केलेले संभाषण हे संशयास्पद आहे.
३. मपोनि. हर्णे, आरोपीताची पत्नी श्रीमती नमिता मेंदीरत्ता आणि पो.शि.क्र.०५-०२९९ / रणजित जाधव यांच्यामध्ये मोबाईलफोन वर झालेल्या संभाषणामध्ये पोनि. हर्णे यांनी आरोपी संदिप मेंदीरत्ता याच्या प्रकृती अस्वास्थाबाबत अतिशय असभ्य, घाणेरडे आणि शिवराळ भाषा वापरली आहे.
४. मपोनि. हर्णे यांनी जे.जे. रुग्णालयाचे डॉक्टरांनी त्यांचे अहवाल नमुद केलेले नसताना सुध्दा मा. उच्च न्यायालयामध्ये सादर केलेल्या अहवालात “**गरज भासल्यास त्यांना अटक सुध्दा करता येईल**” असे वाढीव वाक्य स्वतःच समाविष्ट केलेले आहे.
५. मपोनि. हर्णे यांनी त्यांचे पथकासह शासन आणि वरिष्ठांच्या परवानगीशिवाय फिर्यादीच्या कंपनीच्या खर्चाने विमान प्रवास केलेला आहे.
६. जे.जे रुग्णालयाच्या वैद्यकीय मंडळाने आरोपी संदिप मेंदिरत्ता यांची समक्ष शारीरिक तपासणी न करता फक्त उपलब्ध वैद्यकीय कागदपत्रांवरून अहवाल दिला. त्यास तपासी अधिकारी या नात्याने त्यांनी आक्षेप घेतलेला नाही.
७. दाखल गुन्ह्याच्या इतंभुत कागदपत्रांची पडताळणीवरून सदरच्या कागदपत्रांमधील (Draft) मसुदा मपोनि. हर्णे यांनी स्वतः तयार केलेला नाही.

पो.ह.क्र.२६९५८ /उल्हास कांबळे, बी.के.सी. पोलीस ठाणे यांनी केलेली कसुरी :-

१. फिर्यादी श्री. हर्ष मल्होत्रा यांच्याशी मोबाईल फोनद्वारे संपर्कात असताना सुध्दा त्यांना ओळखत नसल्याचे जबाबात सांगितले आहे.
२. चौकशी दरम्यान चौकशी अधिका-याची दिशाभूल करण्याचा प्रयत्न करून हेतुपुरस्सर आणि जाणीवपूर्वक खोटे बोलले आहेत.

पो.ना.क्र.३१२४२ /विठ्ठल राणे, बी.के.सी. पोलीस ठाणे यांनी केलेली कसुरी :-

१. पो.ना. राणे यांनी त्यांचे मोबाईल फोनवरून डॉक्टरांचे पोनि. हर्णे यांच्याशी बोलणे झाले किंवा कसे ? याबाबतची माहिती जाणीवपूर्वक लपवून ठेवली आहे.

पो.शि.क्र.०५-०२९९/रणजित जाधव, बी.के.सी. पोलीस ठाणे यांनी केलेली कसुरी :-

१. पो.शि. जाधव यांनी पोनि. हर्णे यांच्याशी मोबाईल फोनवर झालेल्या संभाषणाचे जे स्पष्टीकरण दिलेले आहे ते अर्थहीन, खोटे, दिशाभूल करणारे आणि संशयास्पद असे दिलेले आहे.

(Quoted from page 112 of the Paper Book)

5. Accordingly Shri Wakde, submitted detail preliminary enquiry report dated 4.6.2015, (page 101 of the Paper Book) to the Joint Commissioner of Police, (Law & Order), Brihan Mumbai. On receipt of it, Joint Commissioner of Police, Brihan Mumbai issued show cause notice to the applicant on 31.7.2015 and explanation was called as to why two increments should not withheld without cumulative effect [pages 75 & 76 of the Paper Book].

6. Applicant, however, demanded copies of preliminary enquiry report as well as statement recorded by the Preliminary Enquiry Officer by letter dated 4.8.2015. She further demanded copy of first preliminary report. By letter dated 20.8.2015, she was informed that first preliminary enquiry report as demanded by her is not available on record. In so far as demand for copy of preliminary enquiry report is concerned, she was informed that the same cannot be supplied in terms of clause 6.14 of Chapter-VI of Departmental Enquiry Manual. Her demand for supplying the copies of statement of the witnesses recorded by the Enquiry Officer was however fulfilled and the same was supplied to her. The applicant then submitted reply to the show cause notice. Though the copy of the reply was not filed along with the O.A, but was produced at the time of final hearing and the same is taken on record and marked as 'X'.

7. On receipt of the same, Joint Commissioner of Police, Mumbai, passed order on 6.8.2016 thereby holding the applicant guilty for the lapses and imposed minor punishment of withholding of two increments without cumulative effect. The punishment of withholding of one increment was also imposed upon Police Head Constable Shri Ulhas Kamble.

8. Being aggrieved by order dated 6.8.2016, the applicant had filed appeal before the Government (Respondent no. 2) under the provisions of

Bombay Police (Discipline & Appeal) Rules, 1956. In appeal, opportunity of hearing was given to the applicant. The Appellate Authority maintained the finding recorded by the Disciplinary Authority, holding her guilty for lapses, but modified the punishment of withholding of two increments without cumulative effect by imposing punishment of strict warning (सक्त ताकीद). Being aggrieved by the same, the applicant has filed the present Original Application.

9. Shri A.V Bandiwadekar, learned advocate for the applicant sought to assail the impugned order of punishment passed by the Appellate Authority mainly on the following grounds:-

- (a) Earlier in respect of same alleged lapses on the part of the applicant, preliminary enquiry was held and was closed and therefore, subsequent enquiry is not permissible.
- (b) On receipt of show cause notice for imposing minor punishment, applicant had made an application for supply of documents to prepare the defence statement and since the same are not supplied, there is violation of principles of natural justice.
- (c) The Appellate Authority did not consider a single ground raised in the Appeal Memo and mechanically passed the order which exhibits non application of mind and therefore, the impugned order is not sustainable in law.
- (d) The Appellate Authority imposed the punishment of strict warning in place of punishment of withholding of two increments without cumulative effect passed by the Disciplinary Authority. But the said punishment of strict warning is not provided in law and therefore, such punishment is illegal.

10. Per contra, Ms Archana B.K, learned Presenting Officer for the Respondents sought to contend that enquiry in question being for minor punishment, the principles of full-fledged departmental enquiry are not required to be followed and considering the preliminary enquiry, wherein the opportunity of hearing was given to the applicant, the order in question cannot be faulted with.

11. As to point no. (a):- True it appears that earlier accused Shri Sandeep Mendiratta had made a complaint against the applicant for

biased investigation on 13.2.2015 and it was forwarded to the D.C.P for enquiry. Again another complaint was received from Advocate Shri Agarwal on 6.4.2015. In so far as first complaint is concerned, it was not fully investigated nor there was finding of exoneration by the Disciplinary Authority. Indeed, Respondent no. 1 in its reply in para 11 made it clear that in respect of first complaint it was entrusted to D.C.P, Shri Shitre, whose report was found incomplete and unsatisfactory. At the same time, one more complaint dated 6.4.2015 was filed through Advocate Shri Agarwal. It was, therefore, sent to Additional Commissioner of Police, Shri Wakde, for investigation, who investigated the complaint afresh by recording the statement of complainant as well as applicant. Shri Wakde, Addl. C.P, had come to the conclusion that applicant has committed certain lapses in his preliminary enquiry report. It is on the basis of the said preliminary enquiry report dated 4.6.2015 show cause notice was issued to the applicant as to why minor punishment should not be imposed upon her. Suffice to say there was no final finding on the preliminary enquiry report conducted on the basis of earlier complaint dated 13.2.2015, much less there was no finding exonerating the applicant by the Disciplinary Authority. This being the factual position, the submission advanced by the learned advocate for the applicant that in first preliminary enquiry report applicant was exonerated is baseless. Consequently, his contention that second enquiry was impermissible holds no water. It is well settled that if the Disciplinary Authority is not satisfied with the report submitted by enquiry officer, it is always open to redirect enquiry afresh. In fresh enquiry conducted by the Addl. Commissioner of Police, Shri Wakde, he gave full opportunity to the applicant as clearly exhibited from his preliminary enquiry report, which is at page 62 to 74 of the Paper Book. As such, question of prejudice to the applicant does not arise.

12. **As to point no. (b):-** True, on receipt of show cause notice for imposing minor punishment, the applicant had made an application for supply of documents, namely, first preliminary enquiry report, preliminary enquiry report conducted by Addl. Commissioner of Police dated 6.4.2015 and copies of statement of witnesses recorded by the

Enquiry Officer. In respect of supply of copy of preliminary report of first enquiry, she was informed that no such final report is available on record. As regards, enquiry report conducted by the Addl. Commissioner of Police dated 6.4.2015, applicant was informed that the same cannot be made available, in view of clause 6.14 of Chapter VI of the Departmental Enquiry Manual. However, the statement of witnesses recorded by the Enquiry Officer were supplied. On the ground of non-supply of first preliminary enquiry and second preliminary enquiry, learned counsel for the applicant sought to contend that the failure to supply these reports is against the principles of natural justice as the applicant is deprived to prepare her defence properly. I find no merits in this submission.

13. Material to note that the show cause notice was issued to the applicant for imposing minor punishment and it was not for major punishment. Needless to mention that there is difference in the procedure to be followed in case of enquiry for major punishment and enquiry for minor punishment. As per clause 5.1 of Chapter-V of Departmental Enquiry Manual, all that applicant was entitled to have memorandum accompanied by statement of imputation of misconduct or misbehavior for which action is proposed to be taken. It does not speak for supply of enquiry report to the applicant. Let us see the procedure to be adopted for minor penalty as contemplated in Chapter-V of Departmental Enquiry Manual.

“5.1 Imposition of minor penalties :-(1) In cases in which the disciplinary authority decides that proceedings should be initiated for imposing a minor penalty, the disciplinary authority will inform the Government servant concerned in writing of the proposal to take action against him by a memorandum accompanied by a statement of imputations of misconduct or misbehavior for which action is proposed to be taken, giving him such time as may be considered reasonable, ordinarily not exceeding ten days, for making such representation as the Government servant may wish to make against the proposal. In this memorandum no mention should be made of the nature of the penalty which may be imposed. The memorandum should be signed by the disciplinary authority and not by anyone else on its behalf. Specimen of the Form of memorandum of charges for imposing minor penalties is given in Appendix. 10.

(2).....

(3) Rule 10 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 does not provide for the accused Government servant being given the facility of inspecting records for preparing his written statement of defence. There may, however, be cases in which documentary evidence provides the main grounds for the action proposed to be taken. The denial of access to record in such cases may handicap the Government servant in preparing his representation. Request for inspection of records in such cases may be considered by the disciplinary authority on merits.

(4) After taking into consideration the representation of the Government servant or without it if no such representation is received from him by the date specified, the disciplinary authority will proceed after taking into account such evidence as it may think fit, to record its findings on each imputation of misconduct or misbehavior.”

As such perusal of Departmental Enquiry Manual makes it quite clear that there is no requirement of supply of preliminary enquiry report to the applicant. All that requirement is to serve with the memorandum accompanied by statement of imputation of misconduct or misbehavior for which action is proposed to be taken. In the present case, admittedly, the applicant was served with show cause notice which is at page 75 of the Paper Book, which is self-explanatory giving the details of imputations. In the show cause notice there is specific mention that in preliminary enquiry enough opportunity of defence was given to the applicant. The preliminary enquiry report fortify the factual position that full opportunity of hearing was given to the applicant and her statement was also recorded. This being the position, it can't be said that there is any breach of principles of natural justice in so far as procedure imposing minor punishment is concerned.

14. Shri Bandiwadekar, learned counsel for the applicant sought to place reliance on judgment of Hon'ble Supreme Court in **Union of India & Ors Vs. Ram Laxhan Sharma, (2018) 2 SCC (L & S) 356**, which pertains to dismissal from service. This authority is pressed into service for the proposition that when statutory rules are silent with regard to the applicability of any facet of principles of natural justice, applicability of

principles of natural justice which are not specifically excluded in statutory scheme are not prohibited and can be made applicable in given case to advance cause of justice. As such it was matter pertaining to the dismissal of Government employee wherein Enquiry Officer himself acted as Prosecutor and it is in that context the order of dismissal was set aside with further direction to proceed with the enquiry afresh. Whereas, in the present case, the matter pertains to imposition of minor punishment as per procedure laid down in Chapter-V of Departmental Enquiry Manual which inter alia only provides for issuance of memorandum accompanied by statement of imputation of misconduct and nothing more. Applicant had admittedly submitted her reply to the show cause notice and after considering it the Disciplinary Authority had passed order of withholding of two increments without cumulative effect, which was later modified by the Appellate Authority to 'strict warning'.

15. Suffice to say, this being the enquiry for minor penalty, procedure laid down in Chapter-V of Departmental Enquiry Manual is followed and there is no breach of principles of natural justice. Learned Counsel for the Applicant couldn't point out breach of any specific provisions to be followed in imposing minor penalty. Therefore, in my considered opinion, the grievance of the applicant that principles of natural justice are not followed is untenable.

16. As to points no (c) & (d):- Learned Counsel for the applicant vehemently urged that the Appellate Authority didn't consider a single ground out of the grounds she has raised in her appeal memo, which are at pages 79 to 98 of the Paper Book and have not followed the obligation of Appellate Authority as laid down in Rule 15 of the Bombay Police (Punishments & Appeals) Rules, 1956. He has pointed out that the Appellate Authority has simply modified the punishment without giving thought to any of the contentions raised by the applicant in her Appeal Memo, whereby she claimed to be innocent and the charges are said not established.

17. Rule 15 of the Bombay Police (Punishments & Appeals) Rules, 1956 is as follows:-

“15. The appellate authority shall consider:-

- (a) whether the facts on which the order was based have been established;
- (b) whether the facts established afford sufficient ground for inflicting punishment;
- (c) whether the penalty is excessive, adequate or inadequate;

and if it thinks necessary may require the authority passing the order to make further inquiry on any point or points specified and shall then pass such orders as it thinks just and proper, including the enhancement of any punishment given, or the awarding of a more severe punishment.

18. At this juncture, it would also be appropriate to see the relevant portion of the order of the Appellate Authority which is as follows:-

“निष्कर्ष :

सदर प्रकरणी अपिलार्थीची बाजू ऐकून घेण्यात आली. तसेच अपिलार्थीने सादर केलेली व इतर उपलब्ध कागदपत्रे तपासण्यात आली. शिक्षेचे आदेश अपचा-यास प्राप्त झाल्याचा दिनांक ८.८.२०१६ आहे. सदर शिक्षेविरुद्ध ६० दिवसांत अपील करणे आवश्यक असतांना विलंबाने केलेला आहे. तरी, सदर विलंब क्षमापित करून, अपिलार्थीने मांडलेली बाजू, त्यांचा सेवाभिलेख तसेच टप्याटप्याने शिक्षा देवून अपचा-याला सुधारण्याची संधी देण्याची शासनाचे धोरण विचारात घेता, सदर प्रकरणी कसुरीच्या तुजनेत अपिलार्थीला देण्यात आलेली शिक्षा ही सप्रमाणात असली तरी त्यांचा अल्प सेवाकाळ विचारात घेता, सदर प्रकरणी कसुरीच्या तुलनेत अपिलार्थीला देण्यात आलेली शिक्षा ही सप्रमाणत असली तरी त्यांचा अल्प सेवाकाळ विचारात घेता मानवीय दृष्टीने मी खालीलप्रमाणे निर्णय देत आहे.

निर्णय

- १) वादी श्रीमती वैभवी विश्वास हर्णे, वरिष्ठ पोलीस निरीक्षक यांचा अपिल अर्ज मान्य करण्यात येत आहे.
- २) वादी श्रीमती वैभवी विश्वास हर्णे, वरिष्ठ पोलीस निरीक्षक यांना शिस्तभंग प्राधिकारी यांनी दिलेली “आगामी देय वार्षिक वेतनवाढ (पुढील वेतनवाढीवर परिणाम न होता) दोन वर्षे रोखण” याऐवजी “सक्त ताकीद” ही शिक्षा देण्यात येत आहे.
- ३) वरील निर्णयप्रमाणे संबंधितांनी आवश्यक ती कार्यवाही करावी.

(Quoted from page 31 of the Paper Book)

19. Thus the perusal of order passed by the Appellate Authority clearly indicates that Appellate Authority reproduced the points raised by the applicant in her defence in the beginning of the order, but while

coming to the conclusion no reasons are recorded. All that Appellate Authority held that considering the remaining period of service of the applicant punishment needs to be modified to 'strict warning'. It is thus apparent that the Appellate Authority didn't apply its mind to see whether the facts on the basis of which the order has been passed have been established and found sufficient ground for inflicting punishment. The Appellate Authority was under obligation to see the nature of imputation, material collected in support of it during preliminary enquiry vis-à-vis the defences raised by the applicant in this behalf to find out whether the imputations are based upon the material collected during preliminary enquiry. However, it is done so and only punishment was substituted without recording any finding that it is supported by the material placed on record and how the defences raised by the applicant are untenable.

20. True, Appellate Authority is not expected to record elaborate and detailed reasons alike the Judicial Forum. However, it being quasi judicial forum, recording of some reasons to show application of mind is must. Recording of reasons exclude or at any rate minimize arbitrary exercise of powers. The requirement of recording reasons animates from doctrine of fairness. It must be shown that Appellate Authority has applied its mind to the material placed on record and has reached a conclusion which is according to law and is just and for ensuring the same he must record the ultimate mental process leading from the dispute to its conclusion so that it should be further seen that it is not result of caprice, whims or arbitrariness.

21. However, it is explicit from the order of the Appellate Authority that it didn't apply its mind to the material placed on record and simply modified the punishment order mechanically in cavalier manner. Suffice to say, Appellate Authority failed to discharge its obligation imposed upon it by Rule 15 of Bombay Police (Punishment & Appeals) Rules, 1956.

22. Furthermore, the Appellate Authority has imposed the punishment of strict warning (सक्त ताकीद) which is not provided in Rules 1956, as rightly pointed out by the learned counsel for the applicant. Initially the Disciplinary Authority has imposed punishment of withholding of two increments without cumulative effect by order dated 6.8.2016 exercising powers under Section 25 of the Bombay Police Act, whereas the Appellate Authority modified it to punishment of strict warning without reference to any of the provisions of law in which the same is contemplated.

23. As per Section 25 (1)(A) of the Maharashtra Police Act, 1956, following are the punishments:-

“**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 authorized under subsection (2), in that behalf, may imposed upon an inspector or any member of the subordinate ranks of the Police Force, who in the opinion of the State Government or such authorized 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 disqualified for future employment in Government service.....

(1A) The State Government or any officer authorized under subsection(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."

24. As such the punishment imposed by the Appellate Authority as 'strict warning' is not at all provided in the Statute.

25. Shri Bandiwadekar, learned counsel for the applicant in this behalf referred to the decision of the Hon'ble Supreme Court in **Vijay Singh Vs. State of U.P & Ors, Civil Appeal No. 3550/2012**, where the punishment of withholding of integrity certificate for the year 2010 was imposed. It was a case arising from U.P Police Officers of the subordinate ranks (Punishment & Appeal) Rules, which doesn't provide for punishment of withholding of integrity certificate. Hon'ble Supreme Court held that the punishment which is not prescribed under the Rules cannot be awarded and punishment outside the purview of the statutory rules is nullity. As regards the obligation cast upon the Appellate Authority, it has been further held that the statutory authorities are under legal obligation to decide the appeal or revision dealing with the grounds taken in appeal / revision, otherwise, it would be a case of non-application of mind.

26. For the reasons mentioned as to ground Nos.(c) and (d), the order passed by Appellate Authority is not sustainable in law and deserves to be quashed. However, it would be appropriate to remand the matter to the Appellate Authority to decide the appeal afresh after giving opportunity to the applicant in accordance to law. I am, therefore, inclined to remand the matter to the Appellate Authority to decide the same afresh in accordance to law. Hence, the following order.

ORDER

- (A) The Original Application is allowed partly.
- (B) The impugned order dated 24.11.2017 is quashed and set aside. The matter is remitted back to Respondent no. 2, Appellate Authority with directions to decide appeal afresh within two months from today in accordance to law and observation made in order after giving opportunity of hearing to the applicant.
- (C) No order as to costs.

Sd/-

(A.P Kurhekar)
Member (J)

Place : Mumbai

Date : 09.01.2020

Dictation taken by : A.K. Nair.

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