

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL****NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 133/2015 (D.B.)**

Madhukar S/o Samayya Tulsigari,  
Aged 31 years, Occ. Unemployed,  
R/o Ward No.2, Kannamwar Chowk,  
Kottagudam, Post Tah. Sironcha,  
Dist. Gadchiroli-442 504.

**Applicant.**

**Versus**

- 1) State of Maharashtra,  
through the Secretary,  
Government of Maharashtra, Home Department,  
Mantralaya, Mumbai-32.
- 2) The Director General of Police,  
State Police Headquarters, Shahid Bhagat Singh  
Road, Mumbai-01.
- 3) The Deputy Inspector General of Police,  
Gadchiroli Division, Nagpur.
- 4) Superintendent of Police,  
Dist. Gadchiroli.

**Respondents.**

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**Shri S.S. Dhengale, Advocate for the applicant.**

**Shri S.A. Sainis, P.O. for respondents.**

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**Coram :- Shri Shree Bhagwan,  
Vice-Chairman and  
Shri Anand Karanjkar, Member (J).**

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**Date of Reserving for Judgment : 5<sup>th</sup> January,2021.**

**Date of Pronouncement of Judgment : 9<sup>th</sup> January,2021.**

**JUDGMENT****(Delivered on this 9<sup>th</sup> day of January,2021)****Per : Anand Karanjkar : Member (J).**

Heard Shri S.S. Dhengale, learned counsel for the applicant and Shri S.A. Sainis, learned P.O. for the respondents.

2. The applicant is challenging the order of dismissal passed by the disciplinary authority respondent no.4 dismissing the applicant from the service. The facts in brief are that the applicant entered the service as Police Constable. The applicant was dismissed from the service vide order dated 8/8/2008 under Article 311 (2) (b) of the Constitution of India. The said order was challenged by the applicant in O.A.No. 424/2009 and that O.A. was allowed, consequently, the applicant was reinstated in service.

3. The respondent no.4 thereafter suspended the applicant from the service and served charge sheet on him, vide order dated 18/10/2012. The first charge against the applicant was that when the applicant was attached to Sub Police Station, Kasansur, he took the Pistol which was allotted to Naib Police Constable Ravindra Kulmethe, he visited house of one Sulochana Krishnarao Topucharla at Ambatpalli and by showing the Pistol demanded amount Rs.50,000/- from her else threatened to set on fire to her cattle shed and to her person. It was alleged that for this incident Crime no.63/2008 under

Sections 448,385,506 r/w 34 IPC was registered against the applicant and his companion Nara Ramesh Anklu.

4. The second charge was that the applicant used the stolen Pistol and it was found in possession in his house at Sironcha and therefore Crime no. 3015/2008 under Section 3/25 & 27 of the Arms Act was registered against him. The third charge was that the applicant committed theft of the Pistol from possession of Naib Police Constable Ravindra Kulmethe and therefore Crime no.9/2008 was registered at Sub Police Station, Kasansur. The inquiry was conducted, the Inquiry Officer submitted his report and consequently after hearing the applicant, the disciplinary authority respondent no.4 hold that the misconduct of the applicant was proved and therefore dismissed the applicant from service vide order dated 5/8/2013. The departmental appeal preferred by the applicant was also dismissed, therefore, this O.A. is filed.

5. It is contention of the applicant that the applicant was prosecuted in the respective crimes and he is acquitted, therefore, the departmental inquiry is not legal as it amounts to double jeopardy. The second contention is that in absence of evidence the Inquiry Officer held that the charges were proved and the disciplinary authority did not examine the evidence which was before the Inquiry Officer and mechanically held that the charges against the applicant were proved.

It is submitted that as the findings recorded by the Inquiry Officer are not based on any evidence, therefore, the findings are perverse and his dismissal is illegal.

6. The respondent no.4 has filed reply which is at page no.127 of the P.B. and has justified the findings. It is submitted by the respondents that the Inquiry Officer examined the witnesses and relying upon their evidence, the Inquiry Officer came to the conclusion that the charges were proved. It is contention of the respondent no.4 that as the findings are based on evidence, therefore, no interference is required. It is submitted that mere acquittal in criminal case does not prohibit the disciplinary authority to proceed against the delinquent as per the disciplinary rules. It is submitted that the standard of proof in criminal trial and the disciplinary proceeding are altogether different, therefore, the principle of double jeopardy is not applicable. It is submitted by the learned P.O. that no interference is required and decision of the respondent no.4 to dismiss the applicant from the service is a proportionate punishment.

7. We have heard oral submissions on behalf of the applicant and the respondents. The legal position is settled that the jurisdiction of the Tribunal while hearing the case in which the punishment is awarded is very limited. The law is settled that if the findings recorded by the Inquiry Officer are based on reasonable evidence, if they are

not contrary to law and if the punishment awarded is not disproportionate, then the Courts or Tribunals have no jurisdiction to interfere in the matter. Keeping in view these guidelines, we would like to decide this matter. In order to examine the the correctness of the contentions raised by the applicant, we have perused the report of the Inquiry Officer dated 24/4/2013. It seems that the Inquiry Officer examined following witnesses –

(1) Police Head Constable Ravindra Kulmethe, (2) Police Head Constable Narayan Sherki, (3) Police Head Constable Ghisuram Narote, (4) API Jayant Mungelwar, (5) API Sukru Zuri, (6) Naib Police Constable Mangu Atram, (7) Naib Police Constable Pandurang Wadde (8) Naib Police Constable Tarunsingh Uike (9) API Waghmode (10) API Yethewadh & (11) PSI Sunil Langhi.

8. Now it is to be seen whether there is substance in the contention of the applicant that the findings recorded by the Inquiry Officer are not supported by any evidence. On perusal of the evidence it seems that the complaint was lodged by one Sulochana Krishnarao Topucharla r/o Ambatpalli that the applicant and his friend Nara Ramesh Ankru came to her house and by showing Pistol demanded Rs.50,000/- and they had threatened her. So far as charge Article no.1 is concerned, no witness was examined in the inquiry. As the incident occurred at Ambatpalli at house of Sulochana, it was

necessary to examine Sulochana Krishnarao Topucharla or any person who was present at the time of occurrence. So far as charge no.1 is concerned, we are compelled to say that there was no evidence in support of the allegations made in charge no.1. It is important to note that in relation to charge no.1, the Inquiry Officer has observed that this charge was proved, no attempt was made by the Inquiry Officer to show what evidence was there to substantiate the charge no.1.

9. So far as the charge no.3 is concerned, it was alleged that the applicant committed theft of 9mm Pistol and 10 Cartridges from possession of Ravindra Kulmethe and for which the Crime no.9/2008 under Section 380 of IPC was registered against him. In order to substantiate this charge, the witnesses were examined in the inquiry. We have perused the inquiry papers, even as per the story of Ravindra Kulmethe from whose possession the said 9mm Pistol was stolen, it seems that he did not see the applicant while committing the theft of the Pistol. Similarly the other witnesses examined by the department did not say that they saw the applicant while committing the theft. The Inquiry Officer read the statements recorded during investigation as chief examination in the disciplinary proceeding and permitted the applicant to cross examine the witnesses. It is pertinent to note that even as per story of Ravindra Kulmethe, he was relieved

on 4/7/2008 and at that time he handed over possession of Rifle to Police Head Constable Jambhale, then he collected his belonging and left. As per story of Ravindra Kulmethe, he went to Gadchiroli to his house, at 9.45 p.m. he received telephone call from the PSI Waghmode that he did not deposit his Pistol in the Police Station. At that time it was informed by Ravindra Kulmethe that as he was in hurry and he had kept the Pistol in the bag in ~~envelope~~ and he gave intimation that it be collected from the bag after contacting Naib Police Constable Narote. Thereafter it was informed by Shri Waghmode to Shri Ravindra Kulmethe that Pistol was not there and therefore, Ravindra Kulmethe was called upon to appear in the Police Station, he went there, but Pistol could not be found. It was stated by Ravindra Kulmethe that till 18/7/2008 Pistol could not be traced, consequently, disciplinary inquiry was initiated against Ravindra Kulmethe. Thereafter, on 11/8/2008 Ravindra Kulmethe learnt that the Pistol was found in possession of the applicant in Sironcha and thereafter complaint was lodged by Ravindra Kulmethe and Crime no.3015/2008 under Arms Act and another crime under Section 380 of IPC were registered against the applicant.

10. It is important to note that as per department's story there was no allegation against the applicant till seizure of the Pistol from the house of the applicant. It is important to note that all witnesses

who were examined in inquiry did not say that they had seen the applicant when he committed the theft of the Pistol from possession of Ravindra Kulmethe or they saw the fact that the Pistol was seized from the applicant in their presence.

11. The glaring aspect is that as per the official procedure, it was duty of Ravindra Kulmethe to deposit the weapon 9 MM Pistol which was allotted to him before relieving his post. It is important to note that when Ravindra Kulmethe was relieved on 14/7/2008, this rule was relaxed, he was relieved though he did not deposit the Pistol and this creates a doubt about the story, as loss of Pistol was not a minor issue. As a matter of fact it was a duty of the Controlling Officer not to relieve Ravindra Kulmethe till depositing the Pistol, therefore, it seems that so far as charge no.3 is concerned, there was no adverse circumstance against the applicant proved, because, no witness had stated that he saw the applicant while committing the theft or saw the seizure of the Pistol from the applicant. On the contrary as per statement of Ravindra Kulmethe that there was a search of the place where he was staying till 14/7/2008. Similarly, the barrack, bags and kit bags of all the Police Personnel were searched at that time the applicant was present his bag was also examined, but nothing was found. It is pertinent to note that the department did not examined PSI Chillawar or any panch witness to prove the seizure of the 9MM Pistol.



So far as the charge no.3 is concerned and for this the Inquiry Officer has observed that after ascertaining the fact as report was lodged by Ravindra Kulmethe and therefore the charge no.3 was held proved. In our opinion, the finding recorded by the Inquiry Officer is not supported by any evidence, because, there was no evidence that any witness had seen the applicant while committing theft of the Pistol.

12. So far as charge no.2 is concerned, it is pertinent to note that the respondents are relying upon the seizure panchanama by which the Pistol was seized from the house of the applicant. It is important to note that the Inquiry Officer did not take trouble to examine the Police Officers who participated in the raid and panch witnesses. The witness no.2 Police Head Constable Shri Sherki stated before the Inquiry Officer that he had been to the house of the applicant along with other Police Officers, PSI Shri Chillawar searched the house of the applicant in presence of Panch, but he personally did not see that the 9mm Pistol was taken out of the Almirah and in re-examination, this witness deposed that when PSI Shri Chillawar and Panch witness entered the house of the applicant at that time he was standing on the back side of the house. It is pertinent to note that no witness stated before the Inquiry Officer that in his presence PSI Shri Chillawar searched the house of the applicant and Pistol was found in Almirah. The Inquiry Officer did not examine PSI Shri

Chillawar or the Panch witnesses. In view of this nature of evidence, we are compelled to say that there was no stretch of evidence to substantiate any charge against the applicant. After perusing the report of the Inquiry Officer and the evidence which was adduced in the inquiry, it must be said that there was no evidence in support of any charge framed against the applicant.

13. The learned P.O. has placed reliance on the Judgment delivered by the Hon'ble Apex Court in case of **Southern Railway Officers' Association & Ano. Vs. Union of India, 2009 (2) SCC, (L&S),552.** This Judgment is relating to the exercise of power under Article 311 (2) (b) of the Constitution of India and at this stage it has no application, since the impugned order is passed after the full-fledged inquiry.

14. We have already discussed that if the findings recorded by the Inquiry Officer are not based on evidence or there is no evidence at all to justify the findings recorded by the Inquiry Officer, then consequence will that such finding cannot be sustained. The applicant has also produced the Judgement delivered by the JMFC Manthani (Andhra Pradesh) on 5/11/2013, Criminal Case no. 303/2008, it seems that so far as the prosecution of the applicant on the basis of report lodged by Smt. Sulochana Topucharla is concerned, in that criminal trial Smt. Sulochana turned hostile and she

did not support the case of prosecution and refused to identify the applicant.

15. So far as the prosecution under Section 25 of the Arms Act is concerned, the applicant is acquitted by the JMFC, Sironcha vide Judgment dated 15/11/2014. Similarly, in Criminal case no.135/2009, the JMFC, Aheri acquitted the applicant of the offence punishable under Section 380 of IPC. In view of acquittal of the applicant in all criminal cases, there was some more burden on the Inquiry Officer to extract the truth. We have already pointed out that the material witnesses PSI Shri Chillawar and Panch witnesses or any Police Officer who was present at the time of seizure of Pistol from the house of the applicant were not examined and therefore there was absolutely no stretch of evidence to substantiate any charge against the applicant. It seems that the approach of the Inquiry Officer was illegal. Once it is held that the findings recorded by the Inquiry Officer are not based on evidence and such findings are recorded on surmises and conjunctures, then such findings cannot be justified. In absence of evidence the Inquiry Officer has recorded that charge nos.1 to 3 were proved and therefore we are compelled to say that it is miscarriage of justice. Therefore we are of the view that punishment awarded by the disciplinary authority cannot be justified. Hence the impugned order dated 5/8/2013 passed by the respondent no.4

dismissing the applicant from the service is required to be set aside.

Hence, the following order –

**ORDER**

The impugned order Annex-A-2, dated 5/8/2013 passed by the respondent no.4 dismissing the applicant from the service is hereby set aside. The respondent no.4 is directed to reinstate the applicant in service with continuity with full back wages within 30 days from the date of the order.. No order as to costs.

**(Anand Karanjkar)**  
**Member(J).**

**(Shree Bhagwan)**  
**Vice-Chairman.**

**\*Dated** :- 09/01/2021.

dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble V.C. and Member (J).

Judgment signed on : 09/01/2021.

Uploaded on : 09/01/2021.

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