

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No.186 of 2022 (S.B.)**

- 1) Mr. Anil S/o Balaji Basari;
Aged about 34 years; Occupation- Agriculturist;
R/o- House No.114, Ward No.1, Sawangi,
Tahsil- Saoner, District- Nagpur.

Applicant.

Versus

- 1) State of Maharashtra through,
Secretary, Department of Home (Rural) Room No.319(Extension),
Third Floor, Mantralaya, Mumbai-32.
- 2) Divisional Commissioner,
Nagpur Division, Nagpur, Civil Lines,
Nagpur-440001.
- 3) Sub Divisional Magistrate, Saoner,
Administrative Building, First Floor, Chindwara Road,
Taluka-Saoner; District- Nagpur (441107).
- 4) Mr. Namdeo S/o Nathuji Zhalke,
aged about Major, Occupation - Unknown,
R/o Sawangi (Heti), Taluka- Saoner, District-Nagpur.

Respondents.

Shri S.B. Tiwari, Advocate for the applicant.

Shri V.A. Kulkarni, learned P.O. for respondent nos.1 to 3.

**S/Shri S.R. Bhongade, M.H. Mahashabde, N. Jambhukar Advs. for
respondent no.4.**

**Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.**

Dated :- 31/01/2024.

JUDGMENT

Heard Shri S.B. Tiwari, learned counsel for the applicant, Shri V.A. Kulkarni, learned P.O. for respondent nos.1 to 3. None for respondent no.4.

2. None were present for respondent no.4 on 04/01/2024, 11/01/2024, 30/01/2024 and today also.

3. The case of the applicant in short is as under –

The applicant was appointed as a Police Patil of village Sawangi (Heti) by R-3 in pursuance of order dated 11/04/2017 passed by this Tribunal in O.A.No.55/2017. Since then, the applicant is performing his duty as a Police Patil. On 10/03/2019, respondent no.4 had filed a complaint against the applicant before respondent no.3. The respondent no.4 is having an old hostile relationship with the applicant. There are counter criminal and civil case filed by them against each others. The respondent no.3 on the basis of complaint made by respondent no.4 called report from Police Station Officer, Saoner, dated 16/12/2020. The respondent no.3 issued show cause notice on 22/12/2020. The applicant submitted his explanation to the said show cause notice. The applicant was not provided any copy of report of Police Station Officer, Saoner. Again respondent no.3 called report dated 22/05/2021 from Police Station Officer, Saoner. On 31/05/2021 second show cause notice was issued by respondent

no.3. The applicant had given explanation to the said show cause notice. Respondent no.3 without any inquiry dismissed the applicant from the post of Police Patil.

4. The applicant preferred appeal before the Divisional Commissioner, Nagpur. The Divisional Commissioner, Nagpur as per order dated 18/08/2021 quashed and set aside the order of termination issued by respondent no.3. Respondent no.4 filed second appeal before the Minister of State (Home). The Minister of State (Home) has passed the order dated 03/02/2022 by which the order passed by the Divisional Commissioner, Nagpur is quashed and set aside and termination order passed by the Sub Divisional Magistrate, Saoner (R/3) is maintained. Hence, the applicant approached to this Tribunal for the following relief –

“(9) I. Call for the record and proceedings in respect of the Departmental Proceedings initiated by the learned Respondent No.3 against the applicant who is holding the post of Police Patil at village Sawangi, Saoner, Nagpur.

II. Quash and set aside the order dated 03/02/2022 passed by the learned Respondent No.1 against the applicant in Appeal No.241/PL-8/2021 (ANNEXURE A-1) AND

III. Restore the order dated 18/08/2021 passed by learned Respondent No.2 in Appeal No.04/2020-21(ANNEXURE A-9) in the interest of Justice.

IV. The application may be allowed with cost on the respondents.

V. Grant any other relief which this Honorable court may found applicant entitled to in the light of facts and circumstance of the present case in the interest of justice.

5. The O.A. is opposed by respondent nos.1 to 3. Respondent no.4 had not filed any reply. It is submitted by the side of respondent nos.1 to 3 that there was complaint against the applicant and looking to the complaint of misbehaviour, he was given show cause notice and thereafter he was dismissed from service. Hence, the O.A. is liable to be dismissed.

6. During the course of submission the learned counsel for applicant has pointed out the Judgment of M.A.T., Principal Bench, Mumbai in O.A.No.78/2023. The learned counsel for applicant has pointed out Rules 8 and 9 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (in short "D & A Rules of 1979"). The learned counsel for applicant has submitted that without holding any departmental enquiry, without giving any opportunity of hearing to the applicant, he was dismissed from the service. The order passed by the Divisional Commissioner, Nagpur is perfectly legal and correct. The Minister of State (Home) has passed the order without following the procedure.

7. The learned counsel for applicant has submitted that the as per the Rule of 9A of the Maharashtra Village Police Patil (Recruitment, Pay, Allowances and Other Conditions of Service, Order,1968 (in short "Order of 1968") "No penalty shall be imposed on Police Patil under Clause (a) or (f) of Section 9 of the Act, unless the

procedure prescribed in rule 55 (now Rule 8 & 9 of the “D & A Rules of 1979”) or the Civil Services (Classification, Control and Appeal) is followed.” “No penalty shall be imposed on a Police Patil under any other clause of the said Section 9, unless the procedure prescribed in rule 55A (Rule 8 & 9 of the “D & A Rules of 1979”) is followed.”

8. From the perusal of order passed by Sub Divisional Magistrate, Saoner (R/3) it is clear that no any opportunity of hearing was given to the applicant. The dismissal order was passed only on the basis of report submitted by Police Station Officer, Saoner. As per the submission of learned counsel for applicant the copy of the report of Police Station Officer, Saoner was also not supplied to the applicant. As per the submission of learned counsel for applicant, there was old rivalry between the applicant and respondent no.4. Respondent no.4 intentionally harassed the applicant. He has filed second appeal before the Minister of State (Home). This itself shows that respondent no.4 is interested to remove the applicant from the post of Police Patil. Without following the procedure as prescribed under the Rule 8 & 9 of the “D & A Rules of 1979”, the applicant cannot be removed. Hence, the impugned order is liable to be quashed and set aside.

9. The learned P.O. Shri V.A. Kulkarni submits that the statements of witnesses were recorded by Police Station Officer,

Saoner. Those statements show that the behaviour of applicant was not proper. He was behaving indecently and therefore show cause notice was issued and he was dismissed by respondent no.3. The learned P.O. has submitted that the Civil Services Rules are not applicable to the Police Patil and therefore there was no necessity to initiate regular departmental enquiry. Hence, the O.A. is liable to be dismissed.

10. It is clear from the Rule-9A of "Order of 1968" that no penalty shall be imposed on a Police Patil under Clause (a) or (f), i.e., censure / dismissal from service. No any procedure is followed as prescribed under the rules, i.e., regular departmental enquiry.

11. Rule 9A "Order of 1968" is very clear. It shows that without holding any departmental enquiry, Police Patil cannot be dismissed from service. There is no dispute that respondent no.3 has not conducted any departmental enquiry. Only show cause notice was issued and after the explanation by the applicant, he was dismissed from service. No procedure as laid down under Rule-8&9 of "D & A Rules of 1979", is followed.

12. The order passed by the Divisional Commissioner, Nagpur appears to be legal and proper. The material part of the order is reproduced below –

“१) महाराष्ट्र ग्राम पोलीस अधिनियम १९६७ मधील कलम ९ अ -अंतर्गत शास्ती लावण्यासाठी पालन करावयाची कार्यपद्धती-(१) नागरी सेवा (वर्गीकरण, नियंत्रण व अपील) नियमाच्या नियम ५५, मध्ये विहित केलेल्या कार्यपद्धती अनुसरून कार्यवाही करण्यांत यावी असे नमूद आहे परंतु सादर प्रकरणांमध्ये उपविभागीय दंडाधिकारी, सावनेर यांनी ही प्रक्रिया न अवलंबता महाराष्ट्र ग्राम पोलीस अधिनियम १९६७ मधील कलम ९ अ अधिनियमाच्या कलम नऊ खंड (फ) खाली अपिलार्थी यांना शास्ती केली आहे असे दिसून येते.

२) अपिलार्थीने सादर केलेल्या अभिलेखावरून अपीलार्थी यांना १. श्री अशोक कोळी, पोलीस निरीक्षक, सावनेर यांनी दिनांक १०/१२/२०२० रोजी "करोना योद्धा" म्हणून सन्मानित केल्याचे दिसून येते. २. रामनवमी शोभायात्रा दरम्यान चोख बंदोबस्त राखण्यास मदत केल्याबाबत दि.२५/०३/२०१८ चे प्रशस्तीपत्र दिल्याचे दिसून येते. ३. आषाढी एकादशीचे यात्रेचे वेळी चोख बंदोबस्त राखण्यास मदत केल्याबाबत दि. २८/०७/२०१८ चे प्रशस्तीपत्र देवून अपीलार्थीला सन्मानित करण्यांत आल्याचे दिसून येते. ४. विधानसभा निवडणूकीचे वेळी बूथ क्र. ७२ येथे मतदान केंद्राध्यक्षांना पूर्ण मदत केल्याबाबतचे प्रमाणपत्र अभिलार्थीने सादर केल्याचे दिसून येते.

सबब उपविभागीय दंडाधिकारी, सावनेर, जिल्हा नागपूर यांनी दिनांक १५/०६/२०२१ रोजी पारित केलेला बडतर्फीचे आदेश खारीज करावा, असा अपिलार्थी यांनी केलेला दावा मान्य करणे उचित राहिल.

वरील विवेचनावरून प्रकरणात खालीलप्रमाणे आदेश पारित करण्यात येत आहे.

-: आदेश :-

१. अपिलार्थी यांचा अपील अर्ज मंजूर (मान्य) करण्यात येत आहे.
२. उपविभागीय दंडाधिकारी, सावनेर, जिल्हा नागपूर यांचे दिनांक १५/०६/२०२१ चा आदेश रद्द करण्यात येत आहे.

सादर आदेश आज रोजी माझ्या सही व शिक्क्यानिशी पारित करण्यात येत आहे.”

13. In O.A.No.78/2023, decided on 25/4/2023 MAT, Principal Bench, Mumbai has held as under. The Para nos. 6 to 10 are reproduced below-

“(6) The appointment, duties as well as procedure for imposing penalties to Police Patil is governed by Maharashtra Police Act, 1967. Section 9 of Maharashtra Police Act, 1967 provides for the penalties for misconduct committed by Police Patil which is as under :-

"9. Any Police-patil or member of a village establishment liable to be called on or for the performance of Police duties, who shall be careless, or negligent in the discharge of his duties or guilty of any misconduct shall be liable to the following penalties, namely:-

- (a) censure;
- (b) recovery from his remuneration of the whole or part of any pecuniary loss caused to Government;
- (c) fine, not exceeding his remuneration for a month;
- (d) suspension, for a period not exceeding one year;
- (e) removal from service, which shall not disqualify from future employment under Government;
- (f) dismissal from service which shall ordinarily disqualify from future employment under Government.

Any of the penalties, mentioned in clauses (a) to (d) may be imposed by any Executive Magistrate not below the rank of Taluka Magistrate, and the penalties mentioned in clauses (e) and (f) may be imposed by any Executive Magistrate not below the rank of Sub-Divisional Magistrate who is competent to make the appointment of the Police-patil."

7. Whereas Rule 9A of Order of 1968' provides for procedure to be observed for imposing penalties which is as under:-

"9A-Procedure to be observed for imposing penalties:

- (1) No penalty shall be imposed on a Police Patil under clause (a) or (f) of Section 9 of the Act, unless the procedure prescribed in rule 55 or the Civil Services (Classification, Control and Appeal) Rules is followed.
- (2) No penalty shall be imposed on a Police Patil under any other clause of the said Section 9, unless the procedure prescribed in rule 55A of the said rules is followed.

8. Notably, Order of 1968 has been later amended by Maharashtra Village Police Patil (Recruitment, Pay, Allowances and other Conditions Services) (Amendment) Order, 1985 and in Clause 9A of Order of 1968' following amendments are done :-

- "1. This order may be called the Maharashtra Village Police Patil (Recruitment, Pay, Allowances and other Conditions of Service) (Amendment) Order, 1985.

2. *In clause 9A of the Maharashtra Village Police Patil (Recruitment, Pay, Allowances and other Conditions of Service) Order, 1968:*

(a) In sub-clause (1), for the words, figures and brackets "rule 55 of the Civil Services (Classification, Control and Appeal) Rules", the words, figures and brackets "rules 8 and 9 of the Maharashtra Civil Services (Discipline & Appeal) Rules 1979 shall be substituted.

(b) In sub-clause (2), for the words, figures and letter "rule 55A of the said rules", the words, figures and brackets "rule 10 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 shall be substituted.

9. *Thus in effect for imposing penalties, the procedure contemplated in Rule 8 and 9 of D & A Rules of 1979' is required to be observed scrupulously. Rule 8 and 9 of 'D & A Rules of 1979' provides for issuance of detailed charge-sheet with articles of charges, appointment of Enquiry Officer and recording of evidence of witnesses with opportunity of cross examination and to examine defence witnesses etc. Suffice to say, for imposing penalty, regular DE as contemplated under 'D & A Rules of 1979' is mandated.*

10. *However, in the present case, the SDO instead of conducting DE as contemplated in law directed Tahasildar to make enquiry and submitted report, which is not in accordance to law. The SDO was required to adopt and follow the procedure as mandatory in law in terms of 'Order of 1968. He was required to issue charge-sheet and them to take further steps in terms of Rules 8 and 9 of D & A Rules of 1979 in which there is in-built provision for filing written statement, record of evidence, cross- examination, examination of defence witness, so that delinquent is given full opportunity to defend him. However, all these provisions are trampled upon by the SDO. The procedure adopted by him cannot be equated with the procedure contemplated under Rules 8 and 9 of "D & A Rules of 1979."*

14. It is clear from the above cited Judgment and Rule 9A of "Order of 1968", the respondent no.3 should not have dismissed the applicant without following the procedure of conducting regular departmental enquiry. The respondent no.3 not given any opportunity

of hearing to the applicant. Only on the basis of the report of the Police Station Officer, Saoner, explanation was called. After the explanation, without any departmental enquiry or giving any opportunity of hearing to the applicant, dismissed the applicant from the post of Police Patil. Hence, the impugned order passed by respondent no.3 is illegal and liable to be quashed and set aside. Hence, the following order –

ORDER

- (i) The O.A. is allowed.
- (ii) The impugned order passed by respondent no.3 and order passed by respondent no.1, dated 3/2/2022 are hereby quashed and set aside.
- (iii) Respondent no.3 is directed to reinstate the applicant.
- (iv) No order as to costs.

Dated :- 31/01/2024.

(Justice M.G. Giratkar)
Vice Chairman.

*dnk.

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

Name of P.A. : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 31/01/2024.