

MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION No.433 of 2016

Shri Prakash Govind Pingale)
R/o.23/D, Kalyandas Wadi, opp.)
Jaihind Cinema, Lalbaug, Dr.)
Ambedkar Road, Mumbai 400 016.) ...Applicant

Versus

1. The State of Maharashtra, The
Additional Chief Secretary, Home Dept.)
Mantralaya, Mumbai 32.)
2. The Director General of Police,)
Maharashtra State, Shahid Bhagatsing)
Road, Fort, Mumbai 400 001.)Respondents

Ms S.P. Manchekar, Advocates for Applicant.

Ms S. Suryawanshi, Presenting Officer for Respondents.

CORAM : SHRI R.B. MALIK (MEMBER-JUDICIAL)

DATE : 01.02.2017

JUDGMENT

1. The applicant who must have now retired on superannuation on 31.10.2016 questions the order of punishment made by the second Respondent, Director General of Police on 21.05.2014. It was confirmed in Appeal by the 1st Respondent - State of Maharashtra in Home Department on 31.04.2016. The impugned order reads as follows :-

“-:अंतिम आदेश:-

मी, संजीव दयाल, पोलीस महासंचालक, महाराष्ट्र राज्य, मुंबई याद्वारे सेवानिवृत्त वरिष्ठ कार्यालय अधीक्षक, भाऊसाहेब सर्जेराव निकम यांना “ठपका ठेवणे” ही शिक्षा देत आहे. तसेच प्र.लि.प्रकाश गोविंद पिंगळे यांना “शासकीय सेवेतून सेवानिवृत्त होईपर्यंत त्यांची पदोन्नती रोखून ठेवणे” ही शिक्षा देत आहे.

सदर शिक्षेने कसुरदार व्यथित होत असतील तर सदरचे आदेश प्राप्त झाल्या दिनांकापासून ४५ दिवसांचे आत शासनास योग्य मार्फतीने अपी अर्ज सादर करू शकतात.

सही,
(संजीव दयाल)
पेलीस महासंचालक
महाराष्ट्र राज्य, मुंबई.”

The promotion of the Applicant was stopped forever. And, therefore, there would not be any increment in salary for him actually.

2. The above order was admittedly made only on the basis of a show cause notice and its reply given by the applicant. The stand of the Respondents apparently was that the punishment was minor. Therefore, no enquiry as per Rule 5(1) (v) and (vi) read with Rule 8, sub rules (3) to 27 of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (D & A Rules) was necessary to be held and none was actually held. According to the Applicant however such an enquiry was necessary and a legal imperative.

3. I have perused the record and proceedings and heard Ms. S.P. Manchekar, the learned Advocate for the Applicant and Ms Savita Suryawanshi, the learned P.O. for the Respondents.

4. I must make it quite clear that in two earlier D.Es minor punishment were inflicted on the Applicant. They are not quite germane hereto. I shall therefore keep confined to the one in which the above quoted order came to be made.

5. Rule 5 of the D & A Rules falls in Part III and is titled “PENALTIES AND DISCIPLINARY AUTHORITIES” RULE 5(1) prescribes minor and major penalties. In this O.A., we are admittedly concerned with minor penalties. Rule 5(1) (ii) prescribes a minor penalty of “Withholding of his Promotion”. According to the applicant such withholding forever is not envisaged thereby. Now it does appear that one was of looking at it may be that the word “Withholding” in the context will not mean forever. However another way of looking at it will be that it would also include the

denial of promotion forever because the express text provides no guidance about time limitation and therefore a literal interpretation will have to be resorted to. In my view however this aspect of the matter is best left undecided because on another aspect there is only one view possible to be taken in this O.A. I, therefore do not decide in this O.A. as to whether the punishment imposed by the 2nd Respondent is dehors Rule 5. I proceed further.

6. Rule 10 of D & A Rules needs to be fully reproduced upto sub-rule (2) :-

“10. Procedure for imposing minor penalties – (1) Save as provided in sub-rule (3) of Rule 9, no order imposing on a Government servant any of the minor penalties shall be made except after –

- (a) informing the Government servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehavior on which it is proposed to be taken, and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal;
 - (b) holding an inquiry in the manner laid down in Rule 8, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary ;
 - (c) taking into consideration the representation, if any, submitted by the Government servant under Clause (a) of this rule and the record of inquiry, if any, held under Clause (b) of this rule ;
 - (d) recording a finding on each imputation of misconduct or misbehavior; and
 - (e) consulting the Commission, where such consultation is necessary.
- (2) Notwithstanding anything contained in Clause (b) of sub-rule (1), if in a case it is proposed, after considering the representation, if any, made by the Government servant under Clause (a) of that sub-rule, to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Government servant or to withhold increment of pay for a period exceeding three years or to withhold increments of pay and cumulative effect for any period (the words or to impose any of the penalties specified in clauses (v) and (vi) of sub-rule (1) of the Rule

5) an inquiry shall be held in the manner laid down in the sub-rules (3) to (27) of Rule 8, before making any order of imposing on the Government servant any such penalty.

(3) The record of the proceedings in such cases shall include –

- (i) a copy of the intimation to the Government servant of the proposal to take action against him ;
- (ii) a copy of the statement or imputations of misconduct or misbehavior delivered to him ;
- (iii) his representation, if any ;
- (iv) the evidence produced during the inquiry;
- (v) the advice of the Commission, if any ;
- (vi) the findings on each imputation of misconduct or misbehavior ; and
- (vii) the orders on the case together with the reasons therefor.”

7. Put in actual and practical terms apart from Rule 10(1) (b), in the circumstances set out in Rule 10(2) also the enquiry as per Rule 8 will have to be carried out. In this matter the withholding of promotion is bound to adversely affect the pension payable to the applicant. Therefore, the procedure in this matter an enquiry as laid down by Rule 8(3) to (27) would have to be conducted before imposing on the applicant the impugned punishment. That is not because the punishment is minor or whatever but because the case falls within the office of Rule 10(2). Rule 10(2) is applicable. Here that procedure was not followed and the action was taken only on the basis of the notice to show cause and the cause shown. This precisely was the view of this tribunal (presided over by the then Member (A) in **O.A. 1070 of 2013 (Shri Pravin V/s. State of Maharashtra and one another), dated 16.06.2014.**

8. Ms S. Suryawanshi, the learned P.O. relied upon an unreported judgment of the D.B. of the Hon'ble Bombay High Court at Nagpur Bench in **W.P. No.225/1998 (The State of Maharashtra & 2 Ors V/s. Ramrao), dated 05.11.2014.** I have carefully perused the judgment of the Hon'ble High Court and I find that it was observed by their Lordship that there provision of Rule 10 (2) of the D & A Rules were not applicable at all and, therefore,

the procedure followed for imposing minor penalty was upheld, and the contrary view of the Nagpur bench of this tribunal was not accepted.

9. Here as already noted above the facts are entirely different and the provisions of 10(2) of D & A Rules are clearly applicable.

10. It is, therefore, quite clear that the impugned order imposing punishment of withholding the promotions as if forever is unsustainable and it will have to be quashed and set aside.

11. The impugned order is hereby quashed and set aside. The Respondents are directed to proceed on the basis of there being no adverse order against the applicant and do needful in the matter within three months from today. Original Application is allowed with no order as to costs.

(R.B. Malik)
Member (J)
01.02.2017

Vsm