

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO.474/2017.

(D.B.)

Tarachand Kanthiram Shedmake,
Aged about 57 years,
Occ-Nil,
R/o C/o Sachin Salame,
Plot No.109, Shashikant Society,
Behind Water Purification Centre, Gorewada Road,
Gittikhadan, Nagpur-13.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Department of Home,
Mantralaya, Mumbai.
2. The Director General of Police (M.S.),
Shahid Bhagatsingh Road,
Mumbai.
3. The Commissioner of Police,
Nagpur City, Nagpur.
4. The Deputy Commissioner of Police,
Zone-3, Nagpur.

Respondents

Shri D.S. Sawarkar, the Ld. counsel for the applicant.

Shri A.M. Khadatkhar, the Ld. P.O. for the respondents.

Coram:-Shri J.D. Kulkarni, Vice-Chairman (J)

and

Shri Shree Bhagwan, Member (A)

JUDGMENT

(Delivered on this 13th day of July 2018.)

Per:-Vice-Chairman (J)

Heard Shri D.S. Sawarkar, the learned counsel for the applicant and Shri A.M. Khadatkar, the learned P.O. for the respondents.

2. The applicant Tarachand Kanthiram Shedmake was serving as Police Constable and at the time of impugned order of removal from service, he was serving in the Headquarters in Nagpur City. The applicant remained absent from duty unauthorizedly for a period from 16.6.2004 to 24.8.2009 i.e. for 624 days. After preliminary enquiry, a show cause notice was issued to the applicant as to why she shall not be dismissed from service and after giving him an opportunity, the applicant was removed from service. The order of removal from service has been issued to the applicant by the Additional Commissioner of Police, Nagpur City, Nagpur on 21.2.2012.

3. The applicant has challenged a show cause notice as regards initiation of departmental enquiry against him dated 5.1.2010 (Annexure A-2) issued by the Deputy Commissioner of Police, Nagpur City, Nagpur. Hence, final order was passed by the

Additional Commissioner of Police (Administration), Nagpur City, Nagpur dated 29.2.2012 (Annexure A-1).

4. The respondents in their affidavit in reply justified the removal of the applicant and stated that already lenient view has been taken against the applicant and instead of dismissing him, he has been removed from service. It is stated that the applicant has also preferred an appeal against the order of his removal before the Govt. of Maharashtra in Home Department and the said appeal has been dismissed on 15.10.2015 (Page 111) and the order of removal from service has been maintained. It, however, seems that the said appellate order has not been challenged in this O.A. for the reasons best known to the applicant. It is further stated that, number of opportunities were given to the applicant to submit his defence in the departmental enquiry. But the applicant even did not bother to appear before the Enquiry Officer and, therefore, finally the competent authority was pleased to issue the impugned order of punishment.

5. The learned counsel for the applicant submits that the charge against the applicant was that, he was absent from duty for 624 days unauthorizedly or without giving any intimation to the respondents. The learned counsel for the applicant submits that, the

charge against the applicant was that he was absent from duty for 624 days unauthorizedly or without giving any intimation to the respondents. The learned counsel for the applicant submits that the enquiry was initiated against the applicant vide letter dated 5.1.2010 and the said order was issued by the Deputy Commissioner of Police, Nagpur City and the authority was not competent to initiate such enquiry. Admittedly, the order of removal from service in respect of the applicant has been passed by Additional Commissioner of Police (Administration), Nagpur City, Nagpur as per Annexure A-1 on 21.2.2012 and there is no dispute that he is the competent authority to appoint and remove the applicant from service. The learned counsel for the applicant however, submits that as per Section 25 of the Maharashtra Police Act, 1951, punishment on the subordinate rank officer like the applicant can be ordered by the State Government or any other officer authorized under sub-section (2) in that behalf. The enquiry, therefore, could have been initiated by the Additional Commissioner of Police (Administration), Nagpur City, Nagpur and not the Deputy Commissioner of Police, Nagpur City, Nagpur. Section 25 of the Maharashtra Police Act, 1951 reads as under:-

“Section 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 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 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 the Govt. on account of 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 Govt. service:

Provided that, suspension of a police officer pending an enquiry 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).

(1-A): 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."

6. Plain reading of the aforesaid section shows that the order of punishment in case of the applicant can be issued by the officer authorized under sub-section (2) Section 25 of the Maharashtra Police Act, 1951. Sub-section (2) of Section 25 of the Maharashtra Police Act, 1951 authorizes the Director General Police and Inspector General of Police, Commissioner of Police, Dy.

Inspector General of Police including the Director of Police (Wireless), Superintendent and Principal of Police Training Institute to exercise the power of punishment U/s 25 of the Maharashtra Police Act, 1951. In the present case; admittedly, the order of punishment has been imposed by the Additional Commissioner of Police (Administration), Nagpur City, Nagpur and he was authorized to inflict such punishment. Section 25 of the Maharashtra Police Act, 1951 does not state about initiation of departmental enquiry. It only states as to who shall issue the order of punishment and, therefore, the applicant's contention that, the Deputy Commissioner of Police, Nagpur should not have initiated the departmental enquiry, is not correct and legal. The impugned order is dated 21.2.2012 vide which the applicant has been removed from service and the said order has been passed by the Additional Commissioner of Police (Administration), Nagpur City, Nagpur and, therefore, same has been issued by the officer competent to issue such order.

7. The learned counsel for the applicant submits that the applicant was not given an opportunity to defend himself and even though, he asked for the documents and the documents were not supplied to him. The applicant has placed on record a copy of one application dated 15.6.2010 which is at page No.51 (Annexure

A-8), from which it seems that the applicant had stated that he had received only a copy of the muster roll, station diary etc. He has not specified as to which documents were required. The learned P.O. has invited our attention to one communication dated 12.1.2010 (P.87) vide which it was intimated to the applicant that he had collected the documents on 13.1.2010 from the office. The learned P.O. has also invited our attention to the Enquiry Report which at page Nos. 99 and 100 (Annexure A-13). From the said report, it seems that the applicant was served with letters dated 11.1.2010, 17.2.2010, 20.2.2010, 28.2.2010, 28.3.2010, 31.3.2010, 16.4.2010, 10.6.2010 and 25.9.2010 and was directed to remain present before the Enquiry Officer. The applicant did not bother even to appear before the Enquiry Officer. Admittedly, the documents showing applicant's unauthorized absence from 2004 to 2009 for 624 days, which was the only charge against the applicant were supplied. The copy of muster roll proves his absence from duty. The learned counsel for the applicant submits that the applicant was on medical leave and, therefore, could not defend himself. However, there is nothing on record to show that, the applicant ever filed statement of defence before the Enquiry Officer. On the contrary, the applicant chosen not to remain present before the Enquiry Officer inspite of

repeated chances given to him. In such circumstances, the applicant's contention for the first time before this Tribunal that he was unable to appear because of his illness, cannot be accepted for the first time. He should have justified his absence before the Enquiry Officer. It seems that the applicant has also not brought before this Tribunal that he had preferred an appeal against the order of impugned punishment and the same had been dismissed by the Government.

8. From the Enquiry Report, it seems that the applicant was absent unauthorizedly for 38 days in 2004, 24 days in 2005, 140 days in 2006, 183 days in 2007, 101 days in 2008 and 145 days in 2009. Therefore, this total unauthorized absence period is 634 days. The Enquiry Report states that the relevant documents were given to the applicant on 20.2.2010 itself and acknowledgement was also obtained. As already stated, the applicant was intimated to remain present before the Enquiry Officer through nine letters issued to him. But the applicant remained absent.

9. The learned counsel for the applicant submits that one Shri N.M. Khodwe, the Police Constable of Reserve Police, in the similar circumstances was given less punishment and 50% of his salary was withdrawn, however, said order cannot help the applicant,

since it is not known under what circumstances the said order was passed and that may not be binding on the competent authority. The impugned order clearly states that the competent authority has considered the case of the applicant with leniency and instead of dismissing him from service, he was removed and the said order has already been maintained by the appellate authority. Except the point raised, we do not find any valid point which may call for interference by this Tribunal in the impugned order.

10. The learned counsel for the applicant placed reliance on the judgments delivered in case of (1) **Ratnesh Kumar Choudhary V/s Indira Gandhi Institute of Medical Sciences, Patna, Bihar and others dated 15.10.2015.** (2) **A Sudhakar V/s Master General, Hyderabad dated 24th March 2006, (3) (2015) 8 SCC 461 in case of Bilaspur Raipur Kshetriya Gramin Bank and another V/s Madanlal Tandon, (4) (1991) 1 SCC 588 in case of Union of India and others V/s Mohd. Ramzan Khan, (5) (1991) 1 SCC 598 in case of Subhash Kumar V/s State of Bihar and others. (6) (1983) 2 SCC 442 in case of Bhagat Ram V/s State of Himachal Pradesh and others.**

From the above citations, it seems that if the documents are not supplied to the delinquent, it amounts to violation of principles

of natural justice. In the present case, it seems that the applicant was supplied with documents on which the department wants to rely. It is not clear from the application that of the applicant as to which documents were required by the applicant and its relevancy. Even otherwise, number of notices were given to the applicant to defend the enquiry and still the applicant chose to remain absent. The application even is not tenable, since the applicant suppressed the fact of filing of appeal against the impugned order and its dismissal. In such circumstances, ratio of none of the citations is applicable to the applicant's case.

11. In view of discussion in foregoing paragraphs, we do not find any merits in the O.A. Hence, we proceed to pass the following order:-

ORDER

The O.A. stands dismissed with no order as to costs.

(Shree Bhagwan)
Member (A)

(J.D.Kulkarni)
Vice-Chairman(J)

Dt. 13.7.2018.

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