

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO.76/2010. (D.B.)

Sanjay Pralhad Bawane,
Aged about 24 years,
Occ-Service as Police Constable,
R/o Qtr. No.27/10, New Residency, 501,
SRPF Camp, Wadali Camp, Amravati.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Department of Home,
Mantralaya, Mumbai-32.
2. The Special Inspector General of Police,
Nagpur Range, SRPF Group-4,
Camp, Hingna Road, Nagpur.
3. The Commandant,
SRPF Group-9,
Wadali Camp, Amravati.

Respondents

Shri S.P.Palshikar, the Ld. Advocate for the applicant.
Shri V.A. Kulkarni, the Ld. P.O. for the respondents.

Coram:-Shri J.D. Kulkarni,
Vice-Chairman (J) and
Shri Shee Bhagwan, Member (A)

JUDGMENT

(Delivered on this 3rd day of September 2018.)

Per:Vice-Chairman (J)

Heard Shri S.P.Palshikar, the learned counsel for the applicant and Shri V.A. Kulkarni, the learned P.O. for the respondents.

2. The applicant in this case has claimed for quashing and setting aside the impugned communication dated 7.1.2009 (Annexure A-2) issued by respondent No.3 i.e. the Commandant, SRPF Group-9, Amravati and also to quash and set aside the order dated 5.12.2009 (Annexure A-6) issued by respondent No.2 i.e. the Special Inspector General of Police, Nagpur Range, SRPF Group-4, Hingna Road, Nagpur in Appeal No. SRPF/De/2414/2009. He is also claiming directions to the respondent No.3 to reinstate him on the original post with full back wages.

3. Vide order dated 7.1.2009 (Annexure A-2), services of the applicant came to an end alongwith the services of one Shri Vijay Shrikrishna Billewar. The said order is as under:-

“खालील सशस्त्र पोलीस शिपाई यांच्या सेवेची या विभागास आवश्यकता नसल्याने या आदेशान्वये आदेशाचे दिनांकापासून त्यांची सेवा समाप्त करण्यात येत आहे.”

4. Being aggrieved by the aforesaid order, the applicant preferred an appeal and the appellate authority passed the order as per Annexure A-6 on 5.12.2009 which reads as under:-

“उपरोक्त विषयाचे अनुषंगाने आपणास कळविण्यात येते कि, सदर प्रकरणी कागदपत्रांचे अवलोकन केले असता असे दिसून येते कि, प्राथमिक चौकशीमध्ये आपण दोषी असल्याचे दिसून येते. त्यामुळे आपणावर समादेशक यांनी कार्यवाही केली आहे. आपण तात्पुरत्या सेवेतील कर्मचारी असल्यामुळे तात्पुरत्या सेवेतील कर्मचाऱ्यास सेवेतून कमी केल्यानंतर पुन्हा सेवेत घेण्याचे अधिकार हे फक्त शासनास असल्यामुळे आपले दिनांक नसलेल्या अपील अर्जाचा या कार्यालयाकडून विचार करणे शक्य नाही.”

5. From the facts on record, it seems that the applicant came to be appointed on the post of Police Constable on 5.8.2006 and joined his duty on 6.8.2006. He has successfully completed his tenure and was post in Company-D by respondent No.3. According to the applicant, he was performing his duty faithfully and to the satisfaction of the respondents, but surprisingly on 7.1.2009, the respondent No.3 passed dismissal order (A.2).

6. Being aggrieved by the order dated 7.1.2009, the applicant earlier filed O.A. No. 97/2009 before this Tribunal. But when he came to know that the remedy of appeal was available, he

withdrew the said O.A. with liberty to prefer an appeal before the respondent No.2. Thereafter he filed an appeal before the respondent No.2 and as already stated, vide order dated 15.12.2009, appeal was rejected without going into the merits.

7. According to the learned counsel for the applicant, both the orders i.e. the order of dismissal as well as the order passed by the appellate authority, rejecting the appeal of the applicant are illegal, arbitrary and have been passed without application of mind. No opportunity was given to the applicant to submit his defence and all the procedure was against the principles of natural justice and in violation of the fundamental rights of the applicant. Hence, this O.A.

8. The learned counsel for the applicant submits that at the time of passing of the impugned order, there was no complaint pending against the applicant nor the applicant was given any show cause notice by the respondent authorities for any kind of dissatisfactory work. There is no stigma on the applicant. On the contrary, he had completed the probation period and his services are deemed to be confirmed.

9. The respondent No.3 i.e. the Commandant, SRPF Group-9, Amravati has filed reply affidavit and tried to justify the orders. From the reply affidavit, it seems that the applicant was

residing in S.R.P.F. Camp, Amravati in building No.22/9 and used to have sexual intercourse with one Jyoti Jadhao. ASI Shri Khandare, Buckle No.102 made a written complaint against the applicant and his friend Mr. Vijay Billewar. Both of them were indulging in immoral activities in the residential premises of S.R.P.F. They used to bring girls from outside in the premises for their thieves lust. Before the inquiry was conducted on the basis of complaint of ASI Shri Khandare and on the basis of said report, it transpired that the applicant and his friend were indulged in immoral sexual act with two girls from the city area. Both the girls admitted having sexual relations with the applicant and his friend. It is a sheer moral deprivation on the part of the applicant. It is stated that there was no necessity to issue a show cause notice, as the services of the applicant were temporary and they have not even completed three years' of service. It is stated that the appeal has been rightly rejected.

10. The respondent No.3 has also placed on record documents of inquiry made against the applicant and his friend.

11. Perusal of the impugned orders dated 7.1.2009 shows that the services of the applicant alongwith one Billewar were brought to an end on the ground that there was no need of their

services to the department. The order passed by the appellate authority (A-7) dated 5.12.2009, however, shows that the appeal was rejected on the ground that the applicant was found guilty in the preliminary enquiry. It was further stated that since the applicant was a temporary employee and is dismissed from service, he can be reappointed / reinstated in service only by the Government. For the first time, papers of enquiry have been placed on record alongwith reply affidavit. It is an admitted fact that, no show cause notice is given to the applicant before taking any action of dismissal. It is also not clear from the appointment order as to what was the period of probation and whether the services of the applicant were terminable during the probation period, without assigning any reason or without even issuing a show cause notice.

12. We have also perused the appointment order of the applicant which is at Annexure A-1 (P.15 to 2) (both inclusive). The applicant's name stands at Sr. No.88 in the said order at page No.19. From condition No.2 of the said order, it seems that in the character verification report of the candidate as required, is negative, his services can be brought to an end without giving any notice in writing. However, it is not specifically mentioned as to what shall be the probation period and what action can be taken, if the candidate's

work was not satisfactory during probation period. The learned P.O. has placed on record the judgment delivered by this Tribunal at Nagpur Bench in a group of O.A. Nos. 554 to 557 of 2006 in in case of Yogesh Dhakre V/s. State and two others, O.A. Nos. 555 of 2006 in in case of B.A. Wakode V/s. State and two others, O.A. Nos. 556 of 2006 in in case of R.R. Mudgal V/s. State and two others and O.A. Nos. 555 of 2006 in case of D.P. Gawande V/s. State and two others, delivered on 21.9.2007. This Tribunal has considered the aspect of termination of service of probationers and the persons appointed on temporary basis. This Tribunal has also considered various provisions of Bombay Police (Punishment and Appeal) Rules, 1956 and observed that the show cause notice should have been issued before taking any action against the employee.

13. We have also perused the provisions of the Bombay Police (Punishment and Appeal) Rules, 1956. Amended Rule 3, 3-A and 4 deal with the procedure to deal with the probationer. The said rules read as under:-

“3.The discharge of a probationer, whether during or at the end of the period of probation, on grounds arising out of the specific conditions laid down by the appointing authority, i.e. want of vacancy, failure to acquire prescribed special qualifications or to

pass prescribed tests, does not amount to removal or dismissal.

3-A. Notwithstanding anything contained in clauses (ii) and (iii) of sub-rule (1) of rule 3, the State Government may, for reasons to be recorded in writing remove the disqualification incurred under the said clauses by any Police Officer removed or dismissed from service.

4. (1) No punishment specified in clauses (a-2), (i), (i-a) (ii) and (iii) of sub-rule (1) of rule 3, shall be imposed on any Police Officer unless a departmental enquiry into his conduct is held and a note of enquiry with the reasons for passed an under Imposing the said punishment is made in writing under the signature.

(2) Without prejudice to the foregoing provisions, no order imposing the penalty specified in clauses (i), (ii) and (iv) (v) of sub-rule (2) of rule 3 on any Police Officer shall be passed unless he has been given an adequate opportunity of making any representation that he may desire to make, and such representation, if any, has been taken into consideration before the order is passed.

Provided that, the requirements of this sub-rule may, for sufficient reasons to be recorded in writing, be waived where there is difficulty in observing them and where they have can waived without injustice to the officer concerned.

Note:- The full procedure for holding departmental enquiry before passing an order of removal need not be followed in the case of a probationer discharged in the circumstances described in paragraph (4) of the Explanation to Rule 3. In such cases, it will be sufficient if the probationer is given an opportunity to show cause in writing against his discharge after being apprised of the grounds on which it is proposed to discharge him and his reply (if any) is duly considered before orders are passed.”

14. Plain reading of the aforesaid rules clearly shows that before discharging a probationer whether during or at the end of the period of probation for some specific faults or on account of unsuitability of his service, at least a show cause notice is expected and the said procedure has not been followed by the respondents. Though, the applicant has pleaded that he has completed the probation period satisfactorily, he could not place on record any document to that effect and there is nothing on record to show that, the applicant has completed the probation period satisfactorily. Unless and until specific order is passed regarding completion the probation period, it cannot be said that he has completed the probation period satisfactorily. In such circumstances, presuming

that the applicant was on probation, still at least a show cause notice should have been issued to him to explain the circumstances as to why he shall not be dismissed from service.

15. We have also perused the impugned order (Annexure A-2) of termination of the applicant from service. It simply says that since the services of the applicant are no more required, it has been brought to an end. However, the order of probation period shows that the applicant's services came to an end because he was found guilty in preliminary enquiry. Hence, allegations have been made against the applicant. In such circumstances, it was necessary for the respondent authorities to at least issue a show cause notice alongwith the report of Inquiry Officer to the applicant and to ask him as to why his services shall not be brought to an end. After considering such explanation given by the applicant, necessary order should have been passed.

16. Considering the fact that the applicant's services were brought to an end vide order dated 7.1.2009 and he is no more in service, it will not be proper to reinstate him at this juncture. Instead of doing so, an opportunity can be given to the applicant to explain the circumstances against him and, therefore, we proceed to pass the following order:-

ORDER

- (i) The O.A. stands partly allowed.
- (ii) The impugned order dated 7.1.2009 (Annexure A-2) passed by respondent No.3 i.e. the Commandant, SRPF Group-9, Amravati and the appellate order dated 5.12.2009 (Annexure A-6) issued by respondent No.2 i.e. the Special Inspector General of Police, Nagpur Range, SRPF Group-4, Hingna Road, Nagpur stand quashed and set aside.
- (iii) The respondents are directed to issue a show cause notice to the applicant alongwith the report of preliminary enquiry to explain as to why his services shall not be brought to an end and after considering the explanation given by the applicant, necessary order as may be deemed fit, be passed by the respondent authorities without being influenced by any of the observations made in this order within a period of three months from the date of this order.
- (iv) Procedure for issuing a show cause notice till passing of final order in this regard shall be

completed within three months from the date of this order.

- (v) No order as to costs.

(Shree Bhagwan)
Member (A)

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

Dated:- 3.9.2018.

