**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NOS.463 OF 2016, 464/2016 AND 465/2016**

**DISTRICT: AURANGABAD**

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**1. ORIGINAL APPLICATION NO.463 OF 2016**

Ishwar s/o. Bhika Pawar,
Age : 41 years, Occu. : Service
(as Police Head Constable),
R/o. Plot No.13, Ektanagar,
Jatwada Road,
Dist. Aurangabad. ...APPLICANT

**V E R S U S**

1) State of Maharashtra
(Through Additional Chief Secretary,
Home Department,
M.S., Mantralaya-32.)

2) The Director General of Police,
Mumbai.

3) The Deputy Commissioner of Police,
Aurangabad. ...RESPONDENTS

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**2. ORIGINAL APPLICATION NO.464 OF 2016**

Milind s/o. Laxmanrao Kulkarni,
Age : 49 years, Occu. : Service
(as Police Head Constable)
R/o. C/o, Shri S.H.Mogle,
Plot No.18, Agasti Hsg. Society,
N-9, Cidco, Dist. Aurangabad. ...APPLICANT

**V E R S U S**

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1) State of Maharashtra
(Through Additional Chief Secretary,
Home Department,
M.S., Mantralaya-32.)

2) The Director General of Police,
Mumbai.

3) The Deputy Commissioner of Police,
Aurangabad. ...RESPONDENTS

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**3. ORIGINAL APPLICATION NO.465 OF 2016**

Vinayak s/o. Sadashiv Jadhav,
Age : 45 years, Occu. : Service
(as Police Constable),
R/o. Savitribai Phulenagar,
Himayat Baug, Dist. Aurangabad. ...APPLICANT

**V E R S U S**

1) State of Maharashtra
(Through Additional Chief Secretary,
Home Department,
M.S., Mantralaya-32.)

2) The Director General of Police,
Mumbai.

3) The Deputy Commissioner of Police,
Aurangabad. ...RESPONDENTS

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APPEARANCE :Ku. Preeti Wankhade, learned Advocate for the Applicants in all these O.As.

:Shri V. R. Bhumkar, Smt. Deepali Deshpande and Shri N.U.Yadav, learned Presenting Officers for the respondents in the respective O.As.

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CORAM : B.P.Patil, Member (J)

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DATE : 12th October, 2017

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**C O M M O N J U D G M E N T**
**[Delivered on 12th day of October, 2017]**

The facts and issues involved in all the O.As. are similar, identical and they were punished in a joint departmental enquiry conducted against them. Therefore, all the O.As. are decided by the common order.

2. Applicants have challenged the orders passed by the respondent no.3 dated 16-08-2012 in the departmental enquiry imposing punishment to withhold 2 increments, and the order dated 01-02-2013 passed by the respondent no.2 dismissing their appeal, and also order dated 18-11-2015 passed by the respondent no.1 rejecting their revision application, by filing the present O.A.

3. Applicant in O.A.No.463/2016, viz. Ishwar Bhika Pawar was appointed as Police Constable on 26-06-2002, and thereafter, he was promoted as Police Naik in the year 2007. In the year 2014, he was promoted as Police Head

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constable and since then he is working on the said post. Applicant in O.A.No.464/2016, viz. Milind Laxmanrao Kulkarni has entered in the service of respondent no.4 on 27-12-1991 as Police Constable. He was promoted as Police Naik in the year 2003. In the year 2014, he was promoted as Police Head Constable and since then he is working on the said post. Applicant in O.A.No.465/2016, viz. Vinayak Sadashiv Jadhav has entered in the service as Police Constable in the year 1991 and since then he is working as Police Constable.

4. In the year 2011, all the applicants were working in Commissionarate at Aurangabad. On 13-10-2011, they were assigned duty of transporting live cartridges from Aurangabad to Pune in Tata Sumo Vehicle bearing registration No. M.H.-20-AS-1616. It is alleged that when they were on the way, they stopped their vehicle at Anuraj Family Restaurant situated on Pune-Ahmednagar Road. It is alleged that one V.R.Doiphode, Police Head Constable was driving the vehicle. It is alleged that they consumed liquor in Anuraj Family Restaurant and they were under influence of liquor. At that time, Shri Doiphode stopped

buses passing by the road and abused passengers traveling therein. Thereafter, he left the Government vehicle i.e. Tata Sumo bearing No.MH-20-AS-1616 on the road and fled away. It is alleged that the applicants and other police personnel misbehaved under the influence of liquor. They behaved negligently, irresponsibly and failed to perform their duties diligently. Therefore, on 08-12-2011, respondent no.3 issued memo of charge initiating departmental enquiry against the applicants and other 4 employees.

5. One Shri V.D.Sonawane, Police Inspector of Mukundwadi Police Station, Aurangabad was appointed as Enquiry Officer to conduct the departmental enquiry against the applicants. The applicants submitted their detailed defence in writing before the Enquiry Officer on 20-05-2012. The Enquiry Officer conducted enquiry and submitted his report to respondent no.3 holding the applicants guilty of charges levelled against them. He has held them guilty of the misconduct. On the basis of the report submitted by the Enquiry Officer, respondent no.3 issued show cause notice dated 10-07-2012 to the

applicants as to why punishment of stoppage of 2 increments of pay should not be imposed against them. In response to the said notice, the applicants had filed their reply on 16-07-2012 and prayed to exonerate them from the charges levelled against them. Respondent no.3 was pleased to issue order dated 16-08-2012 imposing punishment of stoppage of 2 increments of pay without considering their reply. The applicants challenged the said order by preferring appeal before the respondent no.2 on 13-09-2012. Respondent no.2 dismissed the appeal on 01-02-2013 and confirmed order passed by the respondent no.2. The applicants challenged both the orders by preferring revision before the respondent no.1 on 02-04-2013. Respondent no.2 rejected their revision on 18-11-2015 and upheld the orders passed by the respondent nos.2 and 3.

6. It is the contention of the applicants that the impugned orders passed by the respondent nos.1 to 3 are not legal, proper and correct. Respondent nos.1 to 3 have not considered the evidence on record. They have wrongly arrived at a conclusion that the applicants misbehaved at

public place. It is their contention that the impugned orders are arbitrary, irrational and illogical. It is their contention that the punishment imposed on them is harsh and disproportionate. Therefore, they have challenged the impugned orders by filing O.As.

7. Respondent nos.1 to 3 have filed their affidavit in reply and opposed contentions of the applicants. They have not disputed the fact of initiation of departmental enquiry against the applicants and other police personnel for their misconduct. They have not disputed the fact that the applicants are punished in the departmental enquiry and their appeals and revisions had been dismissed by the respondent no.2 and respondent no.1, respectively. It is their contention that the applicants and other police personnel were assigned duty of bringing arms, live cartridges etc. from Pune to Aurangabad in government vehicle. It is their contention that the applicants and other employees were proceeding towards Pune from Aurangabad in Tata Sumo vehicle bearing No.MH-20-AS-1616. At that time, they stopped the vehicle at Anuraj Family Restaurant. They consumed liquor and thereafter they misbehaved at

public place under influence of liquor. Said conduct and behavior of the applicants were not befitting to the police personnel, and therefore, memo of charge was issued to them and they were subjected to departmental enquiry.

8. It is their contention that enquiry officer had given liberty to the applicants to defend themselves. He recorded evidence of witnesses of the disciplinary authority and after considering the evidence he held the applicants guilty of the misconduct, and therefore, submitted his report accordingly to the respondent no.3. It is their contention that after considering the report of the Enquiry Officer, respondent no.3 issued show cause notice to the applicants as to why penalty should not be imposed against them. The applicants filed their reply to the said show cause notice.

9. Considering the enquiry report, documents, record and reply of the applicants to the show cause notice, respondent no.3 passed the impugned order dated 16-08-2012 withholding 2 increments of the applicants. It is their contention that the Enquiry Officer has followed the principles of natural justice while conducting enquiry.

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Not only this, but the respondent no.3 had also followed the said principles while imposing the punishment against the applicants. The charges leveled against the applicants were of serious nature. Misconduct of the applicants was of serious nature, and therefore, they had been punished accordingly. It is their contention that the applicants abandoned the Government vehicle containing live cartridges and arms at public place, and therefore, penalty imposed on the applicants is proportionate to the charges leveled against them. It is their contention that respondent no.2 has considered all these aspects and dismissed the appeal. Respondent no.1 has also rejected the revision application filed by the applicants considering the facts of the case. There is no illegality in the order passed by the respondent nos.1 to 3 and the punishment imposed on the applicants is in accordance with the provisions of Maharashtra Police Act, 1951 and the Maharashtra Police (Punishment & Appeals) Rules, 1956. There is no violation of any rules and regulations, and therefore, they prayed to dismiss the O.A.

10. Heard Ku. Preeti Wankhade, learned Advocate for the

Applicants in all these O.As, Shri V. R. Bhumkar, Smt. Deepali Deshpande and Shri N.U.Yadav, learned Presenting Officers for the respondents in the respective O.As. Perused documents produced on record by the parties.

11. Admittedly, applicant Ishwar Bhika Pawar in O.A.No.463/2016 and Milind Laxmanrao Kulkarni in O.A.No.464/2016 were working as Police Head Constable and Vinayak Sadashiv Jadhav in O.A.No.465/2016 was working as Police Constable in Commissionarate, Aurangabad at the time of incident. Admittedly, on 13-10-2011, they were assigned duty of transporting live cartridges from Pune to Aurangabad in Tata Sumo vehicle along with one more police personnel. Admittedly, one Shri Doiphode was working as driver on the said vehicle. Admittedly, departmental enquiry had been initiated against the applicants and other employees on account of their misconduct and misbehavior while discharging their duties i.e. at Police personnel by consuming liquor at public place in Anuraj Family Restaurant situated on Pune-Ahmednagar Road. Admittedly, departmental enquiry

had been conducted against them and the Enquiry Officer held them guilty. Admittedly, respondent no.2 punished applicants on the basis of report of the Enquiry Officer and withheld 2 increments of the applicants. There is no dispute about the fact that the applicants challenged the said order in appeal before the respondent no.2 but it came to be dismissed, and therefore, they filed revision application before the respondent no.1 but it was also dismissed.

12. Learned Advocate for the applicant has submitted that the evidence adduced on behalf of the disciplinary authority is not sufficient to hold the applicants guilty of the charges levelled against them. She has submitted that the witnesses of the disciplinary authority have not identified any of the applicants. Their evidence is not reliable but the disciplinary authority i.e. respondent no.3 relied on the same and imposed punishment against them. She has submitted that medical examination of the applicants has not been conducted and there was no evidence to show that the applicants had consumed liquor

and they were under influence of liquor at the relevant time. She has submitted that the impugned orders passed by the respondents are not legal one.

13. Learned Advocate for the applicant has further submitted that the Enquiry Officer had not recorded findings holding the applicant guilty of misconduct, and therefore, the order passed by the respondent no.3 based on the report of the enquiry report is not legal. She has further submitted that there was no misconduct on the part of the applicants. They were not working as Driver, and therefore, they are not responsible for the alleged instance. But the respondent no.3 has not taken into consideration the said aspect and passed the impugned order and punished them. She has further submitted that the impugned order passed by the respondent no.3 is perverse and not as per the provisions of Rules. She has submitted that respondent no.3 as well as the respondent no.2 have not considered the submissions of the applicants and the abovesaid aspects and wrongly dismissed the appeal and revision preferred by them. She has submitted that the punishment imposed on the applicants is disproportionate

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to the charges levelled against them. She has submitted that lenient view ought to have been taken by the disciplinary authority while imposing punishment but the respondent no.3 has not considered the said aspect. She, therefore, prayed to allow the O.As. and to quash and set aside the impugned order.

14. Learned Advocate for the applicants has submitted that one Shri V.R.Doiphode, who was driver of the vehicle, was punished by the respondent no.2 and he was dismissed from the service. But on filing the appeal, his punishment was modified by the respondent no.2 in the appeal and he was reinstated in service and his pay was reduced to basic pay for 3 years. She has submitted that respondent no.2 had not taken lenient view while discharging appeals of the applicants and respondents have adopted pick and choose method while showing leniency to Doiphode and dismissing the appeals of the applicants. Therefore, said order is not legal one. In support of her submissions, she has placed reliance on the judgment in case of **Pralhad Kishor Bondre V/s. Ramkrishna Shikshan Prasarak Sansthan & Ors.** reported in [**2011 (1)**

**MhLj 166**] wherein it is observed as follows:

> *"16. The Apex Court in Chairman-cum-Managing Director, Coal India Limited and another v. Mukul Kumar Choudhuri, cited supra, has discussed the principles of proportionality in paras 18 to 22, which are reproduced below :*
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> > *"18. "Proportionality" is a principle where the court is concerned with the process, method or manner in which the decision-maker has ordered his priorities, reached a conclusion or arrived at a decision. The very essence of decision-making consists in the attribution of relative importance to the factors and considerations in the case. The doctrine of proportionality thus steps in focus true nature of exercise—the elaboration of a rule of permissible priorities.*
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> > *19. de Smith states that "proportionality" involves "balancing test" and "necessity test". Whereas the former (balancing test) permits scrutiny of excessive onerous penalties or infringement of rights or interests and a manifest imbalance of relevant considerations, the latter (necessity test) requires infringement of human rights to the least restrictive alternative. [Judicial Review of Administrative Action (1995), pp. 601-05, para 13.085; see also Wade & Forsyth: Administrative Law (2005), p.366].*
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> > *20. In Halsbury's Laws of England (4th Edn.), Reissue, Vol.1(1), pp.144-45, para 78, it is stated:*
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> > > *"The court will quash exercise of discretionary powers in which there is no reasonable relationship between the objective which is sought to be achieved and the means used to that end, or where punishments imposed by administrative bodies or inferior courts are wholly out of proportion to the relevant misconduct. The principle of proportionality is well established*

*in European law, and will be applied by English courts where European law is enforceable in the domestic courts. The principle of proportionality is still at a stage of development in English law, lack of proportionality is not usually treated as a separate ground for review in English law, but is regarded as one indication of manifest unreasonableness.*

*21. The doctrine has its genesis in the field of administrative law. The Government and its departments, in administering the affairs of the country, are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without abuse of discretion. There can be no "pick and choose", selective applicability of the government norms or unfairness, arbitrariness or unreasonableness. It is not permissible to use a "sledgehammer to crack a nut". As has been said many a time; "where paring knife suffices, battle axe is precluded".*

*22. In the celebrated decision of Council of Civil Service union v. Minister for Civil Service (1985 AC 374 : (19884) 3 WLR 1174: (1984) 3 All ER 935 (HL) Lord Diplock proclaimed:*
*(All ER p. 950h-j)*

*"Judicial review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'. That is not to say that further development on a case-by-case basis may not in*
*course of time add further grounds.* ***I have in***

***mind particularly the possible adoption in the future of the principle of 'proportionality'****...." (emphasis supplied)"*

*It has been held that there can be no "pick and choose" selective applicability of the government norms or unfairness, arbitrariness or unreasonableness. It has been further held that it is not permissible to use a "sledgehammer to crack a nut". The "proportionality" involves "balancing test" and "necessity test". The "balancing test" permits scrutiny of excessive onerous penalties or infringement of rights of interest and a manifest imbalance of relevant considerations. The "necessity test" requires infringement of human rights to the least restrictive alternative. It has further been held that the court will quash the exercise of discretionary powers in which there is no reasonable relationship between the objective which is sought to be achieved and the means used to that end, or where punishments imposed by administrative bodies or inferior courts are wholly out of proportion to the relevant misconduct.*

*17. A Judicial review of punishment imposed, is held permissible on the broad grounds of* ***(i)*** *illegality,* ***(ii)*** *irrationality, and* ***(iii)*** *procedural impropriety, in a decision of the Apex Court in Tata Cellular v. Union of India, reported in (1994) 6 SCC 651. It has further been held that it does not rule out addition of further grounds in course of time. An 'illegality' implies violation of an express provision of law or the principles of natural justice or the decision-making authority exceeding its powers. It also means that the decision-maker must understand correctly the law that regulates his decision-making power. An 'irrationality' implies absurdity, violence of commonsense, senseless, illogical, unreasonable and disproportionate. It applies to a decision, which is so outrageous in its defiance of logic or of accepted moral standards that no reasonable or sensible person, who had applied his mind on the question to be decided,*

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> *could have arrived at. Lastly, the 'procedural impropriety' means the defects resulting in non-application of mind to the relevant factors and/or considering irrelevant factors having bearing on the manner in which a decision is taken or exercise of power for any collateral purpose or assailing a decision-making process."*

15. She has also placed reliance on the judgment in the case of **Man Singh V/s. State of Haryana & Ors.** reported in [**(2008) 12 SCC 331**], wherein it is observed as under:

> *"19. We may reiterate the settled position of law for the benefit of the administrative authorities that any act of the repository of power whether legislative or administrative or quasi-judicial is open to challenge if it is so arbitrary or unreasonable that no fair minded authority could ever have made it. The concept of equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equal is to be treated equally even in the matter of executive or administrative action. As a matter of fact, the doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. The administrative action is to be just on the test of 'fair play' and reasonableness. We have, therefore, examined the case of the appellant in the light of the established doctrine of equality and fair play."*

16. Learned P.Os. have submitted that the applicants were on duty when they were carrying arms and live

cartridges in a police vehicle. While discharging duties as public servant they consumed liquor, picked up quarrel amongst themselves and misbehaved in public place. Not only this but they stopped buses passing by the road and misbehaved with the passengers travelling in the buses. They have submitted that the applicants had abandoned vehicle at public place wherein arms and ammunitions were laying, and thereby committed serious misconduct. They have submitted that the behavior and conduct of the applicants is not befitting to police personnel and their behavior has maligned the image of the police department in public. They have submitted that the independent witnesses i.e. hotel owner and employees working in the hotel have specifically deposed about the misbehavior and misconduct of the applicants that they were under influence of liquor but the applicants had not cross-examined the said witnesses. Therefore, the unchallenged evidence of those witnesses had been accepted by the Enquiry Officer as well as the disciplinary authority, and therefore, the respondent no.3 has passed the impugned order imposing punishment against the applicants. They have submitted that considering the nature of the charges

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levelled against the applicants, the punishment imposed by the respondent no.3 is proportionate, just and proper. They have submitted that the respondent nos.2 and 3 have rejected the appeal and revision, respectively on merit and there is no illegality in the impugned order passed by the respondent no.3. They have submitted that there is no merit in the O.A., and therefore, they prayed to reject the O.As.

17. I have gone through the documents on record. On perusal of the same, it reveals that the Enquiry Officer recorded statements of 8 witnesses. During the enquiry proceedings, witnesses, viz. Ashok Govind Sable (Owner of the restaurant), Rajendra Ashok Sable, Manoj Shriramkumar Agrawal, Dinesh Gayas Shaikh, Salim Shah Masoom Shaikh, Ansar Nasirkhan, Sandip Kisanrao Dube and Sushil Shivram Jumde were examined by the disciplinary authority. They have specifically stated about the misconduct and misbehavior of the applicants when they stopped at Anuraj Family Restaurant and had a dinner there. The owner of the restaurant had specifically stated that 5 policemen came there. They consumed liquor and

after having dinner they misbehaved and picked quarrel with themselves and they were not in a position to walk as they were under influence of liquor. The applicants had not cross-examined those witnesses, therefore, evidence of witnesses remained unchallenged. Considering their evidence and the evidence of other witnesses Enquiry Officer has held the applicant guilty of the charges levelled against them, and therefore, the Enquiry Officer submitted his report to the respondent no.3.

18. Respondent no.3 on considering the report of the Enquiry Officer and the reply given by the applicants passed impugned order dated 16-08-2012 and punished the applicants accordingly as behavior of the applicants was not befitting to police personnel. Evidence recorded during the departmental enquiry shows that the applicants were on duty and they were carrying arms and live cartridges in the vehicle. When they were on duty, they consumed liquor and abandoned the government vehicle at public place. They quarreled amongst themselves and misbehaved with the passerby. All these facts show that their conduct was not befitting to police personnel.

The applicants are serving in police force, which is a disciplined force. Such type of behavior at a public place, is not expected from public servants who are members and part of disciplined force. Behavior of the applicants at public place has damaged image of the police department in the society. Acts of the applicants misbehaving at public place and abandoning vehicle loaded with arms and live cartridges are of serious nature. Therefore, it amounts to misconduct of serious nature.

19. The Enquiry Officer as well as the disciplinary authority considered these aspects and held the applicant guilty of the charges levelled against them by the respondent no.3 considering the facts and circumstances and the manner in which the applicants behaved in public place under influence of liquor when they were on duty and passed the impugned order. The punishment imposed against the applicants is proportionate considering serious nature of the misconduct of the applicants. Therefore, I do not find any substance in the submissions advanced by the learned Advocate for the applicant that punishment imposed on the applicant is disproportionate and harsh.

20. I have gone through the decisions referred to by the learned Advocate for the applicants. Considering the facts and circumstances of the case and punishment imposed on the applicants, in my opinion, it cannot be said that the said punishment is arbitrary, unreasonable and it is imposed by following pick and choose method. Therefore, principles laid down in the said decision are not attracted in the instant case. Respondent no.2 imposed punishment considering the gravity of the misconduct proved against the applicants, and therefore, the punishment cannot be said to be arbitrary.

21. Applicants are members of the police force which is a disciplined force. It is expectation of the society that the policemen who are members of a disciplined force have to behave in disciplined manner. But the image of the police department has been tarnished by the acts of the applicants. Therefore, they were held guilty of the misconducts committed by them. Consequently, the impugned order has been passed by the respondent no.2 punishing them. On considering the abovesaid facts and circumstances of the case, in my opinion, punishment

imposed on the applicants is just, proper and legal, and therefore, no interference is called for in the impugned orders passed by the respondent no.3 on 16-08-2012.

22. Respondent no.2 has considered all these aspects and dismissed the appeal preferred by the applicants. Respondent no.1 has also rejected the revision application filed by the applicants considering the gravity of the charges levelled against them. There is no illegality in the impugned orders passed by the respondents dismissing the appeal and revision filed by the applicants. Therefore, no interference is called for in the impugned orders.

23. In view of the above discussion, I find no merit in the O.As. Therefore, they deserve to be dismissed. Hence, O.As. are dismissed with no order as to costs.

**(B. P. Patil)**
**MEMBER (J)**

**Place : Aurangabad**
**Date : 12-10-2017.**