

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI, BENCH AT NAGPUR**

**ORIGINAL APPLICATION NO.615 OF 2014  
(Subject : Challenging Compulsory Retirement)**

**DISTRICT : NAGPUR**

Smt. Vishakha w/o. Ramesh Baisane, )  
R/o. Naya Godam, Prabuddha Nagar, )  
Kamptee, District Nagpur. )

**...APPLICANT**

**VERSUS**

1. State of Maharashtra, )  
Through its Secretary, )  
Home Department, )  
Mantralaya, Mumbai 32. )
2. Special Inspector General of Police, )  
Nagpur Region, Nagpur. )
3. Superintendent of Police (Rural), )  
Civil Lines, Nagpur. )

**....RESPONDENTS.**

Shri R.V. Shiralkar, learned Advocate for the Applicant.

Shri H.K. Pande, learned Presenting Officer for the Respondents.

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CORAM : SHRI RAJIV AGARWAL, VICE-CHAIRMAN (A)  
SHRI J.D. KULKARNI, VICE-CHAIRMAN (J)

DATE : 25.4.2017.

PER : SHRI RAJIV AGARWAL, VICE-CHAIRMAN (A)

### J U D G M E N T

1. Heard Shri Shri R.V. Shiralkar, learned Advocate for the Applicant and Shri H.K. Pande, learned Presenting Officer for the Respondents.
2. This Original Application has been filed by the Applicant challenging the order dated 31.08.2010 issued by the Respondents No.3, imposing punishment of compulsory retirement and the order dated 02.02.2011 passed by the Respondent No.2 rejecting the appeal of the Applicant against the order dated 31.08.2010.
3. Learned Counsel for the Applicant argued that the Applicant was appointed as Junior Clerk on compassionate basis on 22.02.1989. Offences under Section 147, 148, 353, 427, 109, 121(A) of the Indian Penal Code and Sections 3 & 4 of Prevention of Damage to Public Properties Act was registered against the Applicant on 06.11.2006, after violent clashes took place between mob and police in the wake of Khairlanji Murder episode. The Applicant had gone to a medical store to purchase some medicines and was caught in a mob protesting against Khairlanji Murder episode. The Respondent No.3 dismissed Applicant from services under


Article 311(2)(b) of the Constitution of India. The Applicant filed O.A.No.494 of 2007 before this Tribunal. During the pendency of the O.A., the Respondent No.1 withdrew criminal cases filed against Applicant and other persons. The O.A. was allowed by this Tribunal by judgment dated 16.07.2008. The Applicant was reinstated in service. A charge-sheet was issued by the Respondent No.3 on 25.05.2009. The charges were related to incident of Khairlanji and all witnesses were from the Police Department. The Enquiry Officer submitted his report on 14.05.2010 and found that Applicant was guilty as charged. The Applicant submitted her say on the Enquiry report and the Respondent No.3 passed the order dated 31.08.2010 without considering the Applicant's reply. The Respondent No.2 had also decided the appeal mechanically without application of mind. The Applicant filed revision before the Respondent No.1 on 27.07.2011. She was personally heard on 13.03.2012. The Revision application was rejected, after the Applicant filed O.A.No.434 of 2013 on 08.11.2012.

4. Learned Counsel for the Applicant argued that there was no evidence against the Applicant that she participated in the violence of the mob. She was caught in the mob as she had gone out of her house to purchase some medicines. There was no evidence that she had attempted to set on fire the police station or the public property. In F.I.R. registered on 07.11.2006 at Kamptee Police Station, the Applicant was not named as on accused. However, in the statement recorded after three years on 10.01.2009, the

witnesses suddenly remembered that the Applicant was also part of the violent mob. Learned Counsel for the Applicant argued that the penalty of Compulsory retirement is harsh and disproportionate, considering that the Applicant had not actually indulged in any violent activity.

5. Learned Presenting Officer (P.O.) argued that the Applicant was leading the mob and was pelting stones and shouting slogans. Learned P.O. stated that C.R. No.300/2006 was registered against the Applicant at Kamptee Police Station on 07.11.2006. She was a Government servant and her action of leading a violent mob, which tried to burn down the police station was a serious breach of discipline and was a grave misconduct. Learned P.O. stated that the D.E. was conducted strictly observing the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 and the Applicant was given full opportunity to defend herself. There was ample evidence against the Applicant about her dereliction of duty and misconduct. Witnesses had personally seen the Applicant leading, the mob and raising slogans. The Applicant did not submit prescription of the Medical Officer or cash-memo for the medicines. The Applicant had not produced any evidence to show that she did not actively participated in the violent activities of the mob.

6. We find that the Applicant has claimed she was not named as an accused in C.R.No.300 of 2006 registered at Kamptee Police Station on 07.11.2006 in ground 'C' of O.A. However, Respondents in affidavit-in-reply dated 30.01.2015




have stated that Crime No.300 of 2016 under Sections 147, 148, 149, 353, 427, 109, 121 (a) I.P.C. read with Section 135 of Bombay Police Act read with Sections 3 and 4 of Prevention of Damage of Public Properties Act was registered against the Applicant on 07.06.2006 at Kamptee Police Station. This fact is noted by this Tribunal in paragraph 3 of order dated 16.07.2008 in O.A.No.494 of 2007 which was filed by the Applicant. This claim of the Applicant is not correct. In paragraph 4.7, the Applicant has stated, that "In the list of witnesses, all the witnesses were of the police department. No individual witness was examined by the department." In the Enquiry Report submitted by the Enquiry Officer on 10.05.2010, the statement of Government witness No.5 Shri Umashankar Harichand Agarwal is mentioned. That person was not working for Police Department. He stated as follows :-

“सदर बयानात त्यांनी नमुद केले की, वरील नमूद पत्त्यावर राहतो व शेतीचा व्यावसाय करतो. दि. ०६.११.२००६ रात्री १०.०० वा. दरम्यान मी व माझेसोबत ५ ते १० लोक पोलीस स्टेशन चे चौकात उभे होते. आम्ही शिवशक्ती डोकोरेशन जवळ नेहमीप्रमाणे बसलो होतो. दरम्यान मोटार स्टॅन्ड चौकाकडून १०० ते १५०. महिला, पुरुष पोलीस स्टेशन जवळ आले आणि लोकांचे घरात, वाहनांवर दगडफेक सुरु केली आणि तोडफोड सुरु केली. मोर्चातील लोक नारेबाजी करीत होते. पोलीस स्टेशन मध्ये पथराव केला व चौकात टायर जाळून रस्ता बंद केला. मोर्चातील लोक पोलीस स्टेशन चे आंत जाण्याचा प्रयत्न करीत होते. पो.स्टे. चे बोर्ड ची तोडफोड केली. ट्युबलाईट फोडले, मोर्चात महिलांसोबत एक महिला सर्वांचे समोरून नारेबाजी करीत होती. मी व माझे सोबत असलेल्यांनी त्या महिलेला समजाविले की, तूमही चुक करीत आहात. यावर ती महिला बोलली की, मला काय समजाविता, मी पोलीस विभागात आहे. त्याचवेळी पी.आय. चौधरी साहेब स्टाफसह ठाण्यात आहे आणि मार्चाचे समोर राहणा-या महिलेला बोलले की, बैसान मॅडम तूमही पोलीस खात्यात नोकरी करीत असल्याने आपणांस या लोकांसोबत दगडफेक व तोडफोड करायला नाही पाहीले. परंतु त्या मानल्या नाहीत. ती महिला बैसाने असल्यांची त्यावरून आम्हाला माहिती पडले. त्यानंतर पोलीसांनी धरपकड ची कारवाई सुरु केल्याने मोर्चातील लोक पळुन गेलेत. त्यानंतर आम्ही आपआपले घरी परत गेलोत.”

Other witnesses have given similar statement. The claim of the Applicant that all Government witnesses were from Police Department is obviously incorrect. We find that the Applicant herself has not made any allegation that there was any procedural infirmity in conducting a D.E. against her. She had challenged the finding against her in D.E. as perverse, claiming that there was no evidence against her. This claim of the Applicant is not true, as there was ample evidence against the Applicant to prove the charges in the D.E.

7. Learned P.O. has relied upon a number of judgments of Hon'ble Supreme Court and High Court, wherein it is held that the powers of judicial review in the matter of disciplinary proceedings are extremely limited. In the case of High Court of Judicature at Bombay Vs. Uday Singh Ganpatrao Naik Nimbalkar & Others : 1997 (2) Mh.L.J. 578, Hon'ble Supreme Court has held that preponderance of probabilities and some material on record would be necessary to reach a conclusion whether or not the delinquent has committed misconduct. This judgment has also quoted from earlier judgment of Hon'ble Supreme Court in B.C. Chaturvedi Vs. Union of India (1995) 6 SCC 749. In the present case, there is some evidence to prove the charges against the Applicant. There was no procedural irregularity in holding D.E. against her and the Respondent No.3 was competent to impose the penalty upon the Applicant. There is no scope of any intervention by this Tribunal in the present case.




8. Having regard to the aforesaid facts and circumstances of the case, this O.A. is dismissed with no order as to costs.

sd/-

**(J.D. KULKARNI)  
VICE-CHAIRMAN(J)**

sd/-

**(RAJIV AGARWAL)  
VICE-CHAIRMAN(A)**

 Place : Nagpur  
Date : . .2017  
Typed by : PRK