

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION No. 255/2012 (D.B.)**

Santosh S/o Mangruji Kumre,  
Aged about 42 years, Occ. Nil,  
R/o Nandli, Tah. Nagbhid, Dist. Chandrapur.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
through its Secretary,  
Ministry of Home,  
Mantralaya, Mumbai-400 032.
- 2) Director General of Police,  
Maharashtra State, Mumbai.
- 3) Deputy Inspector General of Police,  
Gadchiroli Range, Gadchiroli.
- 4) Superintendent of Police,  
Gadchiroli.

**Respondents.**

---

**S/Shri G.N. Khanzode, P.J. Mehta, Advocates for the applicant.**

**Shri A.P. Potnis, P.O. for respondents.**

---

**Coram :- Shri Shree Bhagwan,  
Vice-Chairman and  
Shri Justice M.G. Giratkar,  
Member (J).**

---

**Date of Reserving for Judgment : 11<sup>th</sup> January,2022.**

**Date of Pronouncement of Judgment : 25<sup>th</sup> January,2022.**

**JUDGMENT****Per : Member (J).****(Delivered on this 25<sup>th</sup> day of January, 2022)**

Heard Shri G.N. Khanzode, learned counsel for the applicant and Shri A.P. Potnis, learned P.O. for the respondents.

2. The applicant has filed the present O.A. with a following prayer –

*“(1) Quash and set aside the impugned order dated 15.04.2010 of removal of the Applicant from the service being arbitrary, unreasonable and "illegal.*

*2) Further be pleased to quash and set aside the order dated 1.6.2011 passed by the Respondent No.2 arising out of the order passed by the Respondent No.3 on 29.10.2010 in an appeal as per rule 6 against the impugned order of the Respondent No.4 being passed mechanically, without going into the merits of the matter and in sheer violation of rule 15 of the Bombay Police (Discipline and Appeal) Rules, 1956.*

*3) Direct the Respondent No.4 to reinstate the Applicant in service as a police constable along with all the consequential benefits arising therefrom.*

*4) Stay the effect and operation of the impugned orders dated 1/06/2011 passed by the Respondent No.2 in appeal, thereby confirming the order dated 29.10.2010 passed by the Respondent No. 3 in an appeal preferred against the original/impugned order dated 15.04.2010 passed by the Respondent No.4 during the pendency of the present Original Application.*

*5) Any other relief as this Hon'ble Court deems fit under the facts and circumstances of the case in the interest of justice, equity and fairness.”*

3. The case of the applicant in short is as under –

4. The Applicant was appointed as a Police Constable in the regular selection process by order of Respondent No.4 dated 21/11/1991. Since 2006, the applicant was posted at Police Madat Kendra, Gyarapatti, Tah. Desaiganj Dist. Gadchiroli, within the limits and jurisdiction of the Respondent No.4. The applicant along with four other Police Constables, were served with the common charge sheet on 10/01/2007 by Respondent No.4. The four charges were levelled against the applicant and four other Police Constables.

5. As per the charge sheet, the charges about misconduct of the applicant and four others were as under –

(1) The applicant Santosh M. Kumre was found under the influence of liquor on 21/06/2006, (2) He was absent from duty on 22/06/2006, (3) He was found chanting abusive filmy songs under the influence of liquor along with other Police Constables on 23/06/2006 and (4) He was found sleeping while on duty.

6. The Inquiry Officer recorded the statement / evidence of witnesses and submitted his report on 18/03/2008. The respondent no.4 issued the impugned order on 15/04/2010.

7. It is submitted by the applicant that charges are not proved. The Inquiry Officer not recorded any reasons in his enquiry

report as to how charges are proved. Respondent no.4 not considered the evidence on record and mechanically passed the impugned order. The first and second Appellate Authority without considering the material from record mechanically dismissed the appeal. Hence, the present O.A. is filed before this Tribunal.

8. The application is opposed by the respondents. It is submitted that the charges against the applicant are proved in the departmental enquiry. The applicant and other Police Constables were found under the influence of liquor and they were chanting abusive filmy songs in drunken condition. The applicant misbehaved with the Superior Police Officer. All the charges are proved. Looking to the gravity of charges, the applicant and four other Police Constables were dismissed from the services. Hence, there is no merit in the O.A. and therefore it is liable to be dismissed.

9. Heard the learned counsel for the applicant. He has pointed out evidence recorded by the Inquiry Officer in the departmental enquiry. The learned counsel for the applicant has submitted that witness no.5, Vikas Salode has stated in the cross examination that the applicant and others were singing Bhajans, they were not abusing, false charges are levelled against the applicant. Witness no.7, Police Constable Bagul has stated that false charges were levelled against the applicant. Witness no.8 has stated that the

applicant was singing Bhajan and therefore it is clear that singing Bhajans were not abusing songs.

10. The learned counsel for the applicant has pointed out evidence of PSI Wankhede, PSI Madavi and PSI Sheikh and submitted that the applicant and other Police Constables were not medically examined. They have not prepared seizer panchanama of empty bottles of liquor etc. The learned counsel for the applicant has pointed out the report of Inquiry Officer and submitted that the Inquiry Officer has not given any reason as to how the charges are proved. The respondent no.4 not considered the evidence properly and wrongly passed the impugned order.

11. The learned counsel for the applicant has submitted that as per the Circular dated 31/10/1991 the punishment awarded by the respondent no.4 is not proper. The respondent no.4 could have inflicted minor punishment. The learned counsel for the applicant has pointed out the Circular dated 1/4/2003 and submitted that the Circular is not followed by the respondent no.4.

12. The learned counsel for the applicant has also pointed out that the consumption of liquor is not proved, therefore, harsh punishment of dismissal from service cannot be awarded. In support of his submission pointed out the decision in the case of **Sherbahaddur Vs. Union of India & Ors. 2002 (7) SCC,142**. The

learned counsel for the applicant has also pointed out the decision in case of **Union of India & Ors. Vs. P. Balsubrahmanyam 2021 (3) SLR (SC)** and submitted that the respondent no.4 ought to have given minor penalty and not major penalty looking to the charges proved against the applicant in view of the Circular dated 31/10/1991.

13. The learned counsel for the applicant has submitted that the material charge about consumption of liquor and behaving disorderly is not proved and therefore the applicant is entitled for reinstatement with full back wages. In support of his submission pointed out the decision in the case of **UCO Bank Vs. Presiding Officer, Central government Industrial Tribunal-cum-Labour Court-II, Chandigarh and Ano. 2021 (3) SLR 122 (Punjab & Haryana High Court) and State of Maharashtra & Ors. Vs. Madhukar Suryabhan Ingale, 2020 (6) Mh.L.J.,267.**

14. Heard the learned P.O. He has submitted that the applicant and other four Police Constables were serving in the naxalite area. They were found behaving disorderly and singing the filmy songs under the influence of liquor. The charge against the applicant is gravest act of misconduct and therefore dismissal from service is the proper punishment. In support of his submission pointed out the decision in the case of **State of Punjab & Ors. Vs. Ram Singh Ex-Constable (1992) 4 SCC, 54.** The learned P.O. has submitted that

this Court cannot set aside the punishment. It is for the authority to decide the proper punishment. In support of his submission pointed out the Judgment in case of **B.C. Chaturvedi Vs. Union of India & Ors., AIR,1996 SCC 484.**

15. From the perusal of the enquiry report, it appears that some of the witnesses have given admission in favour of the applicant. Some witnesses namely Shri Bagul and Shri Vikas Sarode have stated that the applicant and others were singing Bhajans, false charges are levelled against them by PSI Shri Rizwi. It is pertinent to note that no reason is given by the witnesses as to why the applicant is falsely implicated. The evidence of Witness no.1 PSI Prakash Wandre, PSI Rizwi, PSI Madavi and PSI Sheikh shows that the applicant and others were singing filmy songs, bhajans etc. under the influence of liquor. Therefore, it cannot be said that it is no case of evidence.

16. From perusal of enquiry report, it appears that the Enquiry Officer has not given any reason as to how charges are proved. The Hon'ble Supreme Court in case of **Sherbahaddur Vs. Union of India & Ors. 2002 (7) SCC,142** has held as under –

*"The expression "sufficiency of evidence" postulates existence of some evidence which links the charged officer with the misconduct alleged against him. Evidence which is neither relevant in a broad sense nor establishes any nexus between the alleged misconduct and the charged*

*officer, is no evidence in law. The mere fact that the enquiry officer has noted in his report, "in view of oral, documentary and circumstantial evidence as adduced in the enquiry", would not in principle satisfy the rule of sufficiency of evidence. The finding of the enquiry officer that in view of the oral, documentary and circumstantial evidence, the charge against the appellant for securing the fraudulent appointment letter was proved, is erroneous. It is clearly a case of finding the appellant guilty of the charge without having any evidence to link the appellant with the alleged misconduct. Therefore, the order of disciplinary authority, under challenge, cannot be sustained."*

But in Para-8, the Hon'ble Supreme Court not given direction for reinstatement of the appellant.

17. In the case of **Union of India & Ors. Vs. P. Balsubrahmanyam 2021 (3) SLR (SC)**, the Hon'ble Supreme Court has held that it is better to leave it to the authorities to impose minor punishment.

18. From the perusal of the evidence, it cannot be said that it is a case of no evidence and therefore the Judgment in the case of **UCO Bank Vs. Presiding Officer, Central government Industrial Tribunal-cum-Labour Court-II, Chandigarh and Ano. (cited above)** is not applicable. From the evidence recorded by the Enquiry Officer more particularly, PSI, Wandre, Rizwi, Madavi & Sheikh, it cannot be said that there is no evidence against the applicant. Hence, the



Judgment in the case of the **State of Maharashtra & Ors. Vs. Madhukar Suryabhan Ingale, 2020 (6) Mh.L.J.,267** is not applicable.

19. It is clear from the report of Enquiry Officer that there is no reason as to how charges are proved and therefore it is vitiated in view of the Judgment in the case of **Sherbahaddur Vs. Union of India & Ors. 2002 (7) SCC,142.**

20. The learned counsel for the applicant has submitted that the applicant was not on duty and therefore the punishment is not proper in view of Circular dated 31/10/1991. The minor punishment is provided, if the applicant was found under the influence of liquor when he was not on duty.

21. From the perusal of enquiry report, it appears that it is not reasoned report and the respondent no.4 also not given the reasons as to how the charges are proved. Appellate Authorities also not considered evidence and mechanically dismissed the appeals. In view of the Judgment in the case of **Union of India & Ors. Vs. P. Balsubrahmanyam 2021 (3) SLR (SC)** and **B.C. Chaturvedi Vs. Union of India & Ors., AIR,1996 SCC 484**, it will be proper to quash and set aside the impugned order and the respondent no.4 shall pass the reasoned order by considering the Circular dated 31/10/1991. In that view of the matter, we pass the following order -

**ORDER**

- (i) The O.A. is partly allowed.
- (ii) The impugned order is quashed and set aside.
- (iii) The respondent no.4 is directed to consider the evidence on record properly and pass the order as per the guidelines given in the Circular dated 31/10/1991.
- (iv) No order as to costs.

**(Justice M.G. Giratkar)**  
**Member(J).**

**(Shree Bhagwan)**  
**Vice-Chairman.**

**Dated** :- 25/01/2022.

dnk\*\*

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble V.C. and Member (J).

Judgment signed on : 25/01/2022.

Uploaded on : 25/01/2022\*