IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.1025 OF 2015

DISTRICT : MUMBAI

Shri Dhananjay Bhaskar Bagayatkar,)
Age 58 years, occ. Retired as Sr. P.I.,)
R/at A-601, Nirelp House,)
G.D. Ambedkar Marg, Parel, Mumbai 400012)..Applicant

Versus

1. The State of Maharashtra,)
Through Home State Minister (for Cities),)
Mantralaya, Mumbai)

2. The Director General of Police,)
Old Council Hall, Maharashtra State)
Police Headquarters, S.B.S. Marg,)
Colaba, Mumbai)

3. The Commissioner of Police,)
Crawford Market, Mumbai)

4. The Joint Commissioner of Police,)
Law & Order, Crawford Market, Mumbai)

5. The Additional Chief Secretary,)
Home Department, Mantralaya, Mumbai)..Respondents

Shri R.G. Panchal – Advocate for the Applicant
Miss Neelima Gohad – Presenting Officer for the Respondents

CORAM : Rajiv Agarwal, Vice-Chairman
R.B. Malik, Member (J)
DATE : 31st March, 2016
PER : R.B. Malik, Member (J)

JUDGMENT

1. This OA calls into question the order dated 1.7.2015 issued by the Joint Commissioner of Police (Law & Order) being the respondent no.4 whereby for an alleged misconduct of lack of supervision an amount equal to the total of one year's increment was ordered to be deducted so as to make sure that the entire amount was recovered before the retirement of the applicant who was working as Senior Police Inspector (Sr. PI) in Nehru Nagar Police Station, Mumbai.

2. We have perused the record and proceedings and heard Shri R.G. Panchal, the learned Advocate for the Applicant and Miss Neelima Gohad, the learned Presenting Officer for the Respondents.

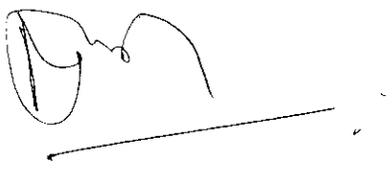
3. The facts in so far as they are relevant here for are that the police personnel in the said Police Station were caught taking illegal gratification for ensuring omission to take action against a person named in the record. They were 36. They were caught on camera and the TV news channel gave extensive coverage thereto. The applicant was Sr. PI Incharge of that police station. There are no allegations against him of having taken illegal gratification. Going by the charge sheet he has been accused of lax supervision and the infractions incidental thereto. He was placed under suspension. Preliminary Enquiry Officer and Dy. Commissioner, Division-6, Chembur, Mumbai held preliminary enquiry in which the response of the applicant was also sought and taken.

4. As already mentioned above the graveman of the charge against the applicant was that in return for omission to take action as per law 36 police personnel took bribe from him showing thereby that the applicant had no control over them. It is imperative on the part of the applicant to give guidance to them to avoid corrupt practices which he did not do. This resulted in the wide publicity to the said incident because of

which the image of police department was sullied. In short he was charged for lax supervision.

5. When the enquiry came to be initiated, Assistant Commissioner of Police (ACP) Shri Milind Shahadeo Bhise, Sr. PI Shri Santosh Bhandare, PSI Shri Wagh and PSI Shri Kesarkar were examined. They were cross-examined on behalf of the applicant. In so far as affording an opportunity to the applicant to defend himself there does not seem to be any infirmity in the Departmental Enquiry (DE).

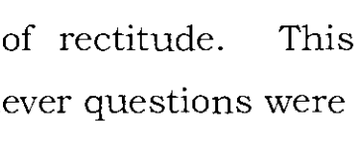
6. It will be pertinent to note that we are exercising the jurisdiction of judicial review of administrative action which jurisdiction is circumscribed. It is not an appellate jurisdiction. The concern of this Tribunal is to make sure that the process of reaching the conclusion was such as to accord with the principles of natural justice. The Tribunal will not be much concerned with the ultimate outcome itself provided the process was in accordance with the principles of natural justice and fair play. It will have to be made sure that opportunity was given to the delinquent to defend himself in a fair and reasonable manner. He should have been given full opportunity to cross-examine the witness of the department and lead his own evidence if he was so inclined to do. Similarly, in so far the procedure is concerned, the rigors of the procedural law which is applicable in case of a criminal trial or even trial of the civil



suit will not be applicable to the DEs but still the procedure must not be oppressive and it must be fair and reasonable. The degree of proof will not be as it is in criminal trial of proof beyond reasonable doubt. It would be preponderance of probability.

7. However, it is equally true that within the jurisdictional limitations the Tribunal still will have to make sure that anything and everything dished out in the name of enquiry and order would not necessarily pass muster with the test. The Tribunal will have to make sure that the test of a reasonable person must be found to have been adopted. If anything and everything just for the asking was to be accepted then the very purpose of having something like judicial review would be practically futile.

8. The above, then, is the parameter which to work within. Now, even as we have carefully perused the statements of the witnesses we may not read them over here in detail because that may be permissible in case of an appellate forum but still something that stares in the judicial face cannot be ignored. Very pertinently all the witnesses have unequivocally stated before the Enquiry Officer (EO) that the applicant would take care to covey to his subordinates the significance of adopting a path of rectitude. This is the simple English translation of whatever questions were put and answers given.



9. If that be so then even as Shri R.G. Panchal, learned Advocate for the Applicant was not entirely unjustified in assailing the very language of the charge and its content because of the inherent unreasonableness of it and contending that after all such a charge at the base of it is not capable of being made and is equally difficult to be met with. Miss Neelima Gohad, learned Presenting Officer for the Respondents, however, stoutly defended the language of the charge. As far as this aspect of the matter is concerned we will leave it at that because on a bare perusal of the statements this charge even otherwise does not stick.

10. The Departmental Enquiry Officer submitted his report. Based on that the disciplinary authority issued a show cause notice to the applicant. The report of the EO is at Exhibit 'K' page 63 of the paper book. It appears there from that the main complainant did not cooperate because he had become disillusioned and frustrated from the police department. It is so mentioned in the report of the EO itself. Be it as it may. The fact is that the statement of the complainant was not recorded. However, we must hasten to add that even otherwise there was no charge of direct financial impropriety against the applicant. The EO fairly concluded that the charge against the applicant was not proved. "निर्विवादपणे सिध्द होत नाही. परंतू हाताखालील कर्मचा-यांच्या भ्रष्ट वर्तनावर नियंत्रण ठेवण्यासाठी त्यांना यश आल्याचे दिसून येत नाही." Therefore, as per

the EO the only charge that was established against the applicant was that he could not have a proper supervision or control over his subordinates.

11. As to the other charge it was found that Sr. PI like the applicant could not be held responsible if his subordinates indulge in corrupt practices because after all those wrong doers or even offenders would be personally liable.

12. It was further held that although the applicant might not have been directly involved but then as many as 36 of his subordinates were found accepting bribe on camera which was shown on TV for about a month. He should have had the knowledge about it. The image of the police has suffered and the applicant should have had the knowledge thereabout. The EO ultimately opined that the applicant should be punished with a fine of Rs.1,000/- (Rupees one thousand only).

13. The disciplinary authority in his show cause notice dated 6.5.2015 at Exhibit 'I' page 59 of the paper book observed that each police personnel should be responsible for his own integrity and, therefore, a Sr. PI may not be held responsible for that. It was also observed that the main charge was not proved against the applicant. However, in the penultimate paragraph this is what was observed by the disciplinary authority:

"आमच्यासमारे आलेली विभागीय चौकशीची कागदपत्रे लक्षपूर्वक अभ्यासल्यावर असे आढळून येते की, विभागीय चौकशी अधिका-याने अपचा-यांस सर्व बचावाच्या संधी उपलब्ध करुन दिल्याचे दिसून येते. विभागीय चौकशी नियमानुसार पूर्ण केली आहे. अपचा-यावर ठेवण्यात आलेले सर्व दोषारोप सर्वार्थाने सिध्द झाले आहेत. यास्तव वरिष्ठ पोलीस निरीक्षक, धनंजय भास्कर बागायतकर यांचेकडून हयगय झाल्याचे निष्कर्षाप्रत आम्ही आलो आहे. त्यामुळे वरिष्ठ पोलीस निरीक्षक, धनंजय भास्कर बागायतकर यांची 'पुढील देय वार्षिक वेतनवाढ एक वर्ष रोखल्यामुळे जेवढी रक्कम होते तेवढी रक्कम त्यांचे सेवानिवृत्तीपूर्वीच्या वेतनातून समान हप्त्यांत का वसूल करण्यांत येवू नये?' या आशयाची शिक्षा प्रस्तावित करणारी कारणे दाखवा नोटीस याद्वारे देण्यात येत आहे."

14. Finally after receiving the response of the applicant the disciplinary authority by the order herein impugned dated 1.7.2015 Annexure 'N' page 83 of the paper book imposed the punishment as already indicated above. It appears quite clearly that the retirement of the applicant was fast approaching and may be, therefore, the expediency over took the propriety and legality so to say. We shall presently elaborate as to why this observation is made. The final order in Marathi at page 85 reads as under:

"मी, सह पोलीस आयुक्त (का.व सु.) मुंबई , मुंबई पोलीस अधिनियम १९५१ च्या नियम २५ अन्वये मला प्रदान करण्यात आलेल्या अधिकाराचा वापर करुन अपचारी वरिष्ठ पोलीस निरीक्षक, धनंजय भास्कर बागायतकर यांना ''पुढील देय वार्षिक वेतनवाढ एक वर्ष रोखल्यामुळे जेवढी रक्कम होते तेवढी रक्कम

त्यांचे सेवानिवृत्तीपूर्वीच्या वेतनातून समान हप्त्यांत वसूल करण्यांत यावी'' ही शिक्षा देत आहे."

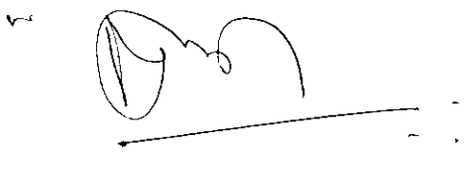
15. The applicant preferred an appeal there against and the order of the State of Maharashtra in Home Department dated 8.10.2015 Annexure 'P' page 97 of the paper book would show that the appeal was dismissed and the punishment was maintained. Pertinently neither in the order of the disciplinary authority nor in the appellate order there is any clear indication as to how they were disposed to the conclusion drawn by the EO. No doubt, the disciplinary authority and, therefore, the appellate authority are fully empowered to either totally accept the report of the EO, entirely reject it or accept it in part. That is because the EO after all is an extended arm of the disciplinary authority. However, if the whole process must be informed by the principles of natural justice then in our view it was absolutely imperative for disciplinary authority as well as appellate authority to briefly indicate as to why they did not entirely agree with the EO with the result they ended up inflicting a much stiffer penalty on the applicant than proposed by the EO.

16. It is no doubt true that if the conclusions of the administrative authorities are based on their reading and interpretation of the evidence and if it is found reasonable in the facts and circumstances normally the process of judicial

review will not interfere. However, if the orders appear to be not coming true to the basic test then it will not only be permissible but a part of judicial duty of the Tribunal not only to intervene but also to interfere.

17. Further the orders herein impugned will have to be read in the totality of the circumstances including the punishment imposed. After the manifestation of the thought process objectively by way of the orders indicate absence of proper appreciation even on that aspect of the matter it will provide support to the conclusion against the impugned orders. We would now, therefore, turn to the punishment aspect of the matter.

18. We have already mentioned above as to what punishment was inflicted by the disciplinary authority and affirmed in appeal. We have perused Section 25 of the Maharashtra Police Act read with Rule 3 of the Bombay Police (Punishment and Appeal) Rules, 1956. There are major and minor punishment provided. The said provisions need to be perused. It is not necessary to detail them all over here. It would be suffice to mention that no such punishment as is imposed on the applicant has been provided expressly by any of the provisions of the Act and/or Rules. They cannot be by implication or inference be found to be there. It is possible that a particular type of punishment may be expressly provided and



a lesser punishment could be held to have been included therein. In that event the lesser punishment can still be approved. But even that is not possible in this particular matter. Shri Panchal, Ld. Advocate in our view aptly relied upon **VIJAY SINGH VERSUS STATE OF UTTAR PRADESH (2012) 5 SCC 242**. In paras 21 and 22 the following observations are made by Their Lordships:

> "21. Undoubtedly, in a civilized society governed by rule of law, the punishment not prescribed under the statutory rules cannot be imposed. Principle enshrined in Criminal Jurisprudence to this effect is prescribed in legal maxim *nulla poena sine lege* which means that a person should not be made to suffer penalty except for a clear breach of existing law.
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> 22. In S. Khushboo v. Kanniammal & Anr., AIR 2010 SC 3196, this Court has held that a person cannot be tried for an alleged offence unless the Legislature has made it punishable by law and it falls within the offence as defined under Sections 40, 41 and 42 of the Indian Penal Code, 1860, Section 2(n) of Code of Criminal Procedure 1973, or Section 3(38) of the General Clauses Act, 1897. The same analogy

can be drawn in the instant case though the matter is not criminal in nature."

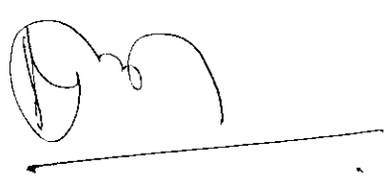
19. We do not think anything more is required to be said of our own. We must accept the submissions of Shri Panchal, Ld. Advocate and record our disagreement with the Ld. PO.

20. We have already discussed about the charge, enquiry etc. Shri Panchal, Ld. Advocate in addition took strong exception to the appointment of the EO even when the time to submit the reply of the applicant to the show cause notice was to expire and in that connection he referred us to a judgment of the **Hon'ble Madras High Court in Writ Petition No.12561 of 2005 (Abraham Amalanathan Versus The Deputy Inspector General of Police & Ors. dated 7.4.2011)**. Shri Panchal, Ld. Advocate apparently has good ground to assail the impugned action but having discussed the matter on merit we would be so inclined as to leave it at that.

21. In view of the foregoing, examine it from any perspective and the orders impugned herein are helplessly vulnerable to our interference. They will have to be quashed and set aside. Now, normally in such circumstances the course of action that a judicial forum adopts is to remit the matter below to act in accordance with the judicial determination. However, in this particular matter, in our view, such an

exercise will be totally pointless. The applicant has since retired on superannuation. Naturally post retirement different set of rules the like of which are enshrined in Rule 27 of the MCS (Pension) Rules will be applicable. And, therefore, the issue of gravity of the alleged infraction would assume significance. It is no doubt true that putting a curtain permanently all by itself by a judicial forum is not a common place order. It has got to be done by the concerned administrative authorities. However, facts permitting, there is no total bar or absence of jurisdiction in the judicial forum. What really happens is that one of the salient features of the judicial action in actual practice is not just existence of powers but also manner of exercise thereof. Therefore, the judicial forum strains every judicial nerve to make sure that the manner of exercise of jurisdiction does not cross the limits. However, if the jurisdiction exists and the facts somewhat rare though, permit it to be done then there is no total bar as we mentioned above. And in any case the applicant has all these years suffered suspension and faced the enquiry which in the context of the present facts and the gravity of the infraction by itself is sufficient enough punishment. No more needs to be inflicted.

22. The orders herein impugned stand quashed and set aside and it is directed that no further action in the matter is



required to be taken against the applicant. OA is allowed in these terms with no order as to costs.

Sd/- Sd/-

(R.B. Malik)
Member (J)
31.3.2016

(Rajiv Agarwal)
Vice-Chairman
31.3.2016

Date : 31st March, 2016

Dictation taken by: S.G. Jawalkar.

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