IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.1028 OF 2019

DISTRICT : PUNE

Shri Rajendra Shivaji Deshmukh (Shewale))
Age : 48 years, Occ.: Police Constable (Buckle No.10),)
SRPF Group No.1, Ramtekdi, Pune 22,)
R/O. A/1,Park Galli No.Sion Niwas, Mahanandwadi,)
Pune 48.) **...Applicant**

Versus

1. The Commandant, State Reserve Police Force,)
Group No.1, Ramtekdi, Pune 22.)

2. The Special Inspector General (Now Deputy -)
Inspector General) of Police, State Reserve Police)
Force, Pune.

3. The Director General and Inspector General of Police)
(M.S.), Mumbai, having office at Old Council Hall)
Shahid Bhagatsinh Marg, Mumbai 400 039.)

4. The State of Maharashtra, through Additional Chief)
Secretary, Home Dept., Mantralaya, Mumbai 32.)**...Respondents**

Shri Arvind V. Bandiwadekar, Advocate for Applicant.

Smt. Archana B. K., Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 06.01.2022.

JUDGMENT

1. The Applicant has challenged the order of punishment dated 05.01.2019 passed by the Government in review thereby setting aside the order of punishment of removal from service and imposing punishment of reduction to lower scale (original pay scale) for the period of three years without any effect on future increments exercising Section 25 of Maharashtra Police Act r/w

Maharashtra Police (Punishment & Appeal) Rules, 1956 invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

2. Shortly stated facts giving rise to O.A. are as under:-

The Applicant is serving as Police Constables on the establishment of Respondent No.1 - State Reserve Police Force (SRPF) Group No.1, Pune 22. The incident giving rise to this punishment took place on 22.10.2012 in the campus of SRPF at Pune. That day road run walk of Police Personnel and officials on the establishment of Respondent No.1 was arranged. At the end of road run walk, one ASI Shri Prakash Godavale collapsed and fell down probably due to exertion in road run walk. He was immediately taken to hospital and then was admitted in Nobal hospital. He was declared dead at 9.20 am due to cardiac arrest. His body was sent for post-mortem to ascertain actual cause of death. Hearing the news of death of Police Constable Shri Prakash Godavale, his relatives and several police personnel as well as SRPF personnel were gathered in front of hospital. That time, the Applicant as well as ASI M.K. Yasade allegedly tried to provoke the crowd and SRPF personnel stating that they would take dead body in the office of Special Inspector of General of Police, SRPF, Pune and will not perform his funeral unless Special Inspector General of Police, SRPF come forward. In the evening, at about 5.00 pm when the dead body was kept on A.T.C. ground for salami (customary homage) that time the Applicant allegedly abused and threatened Assistant Commander Shri N. R. Roy and asked him to sign blank paper. Thus, it appears that the Applicant and ASI M. K. Yasade were upset because of death of their colleague in road run walk and were demanding compensation as well as appointment to the wife of deceased on compassionate ground. The Applicant and ASI Yasade allegedly tried to provoke the crowd which is amounting to indiscipline and misconduct. Therefore, preliminary enquiry was conducted wherein Applicant and ASI Yasade were found guilty for misconduct.

3. Later, regular D.E. was conducted by Enquiry Officer Shri K. M. Nyaynit. Before Enquiry Officer, twelve witnesses were examined by the department. The Applicant has also examined defence witnesses. The Enquiry Officer on

conclusion of enquiry submitted the report holding Applicant as well as ASI Yasade guilty for the charges levelled against them. The Respondent No.1 – Commandant, SRPF after giving show cause notice, imposed punishment of removing from service by order passed in July 2014 which was served upon the Applicant on 10.07.2014. Being aggrieved by it, the Applicant preferred an appeal before Respondent No.2-Special Inspector General of Police, SRPF which came to be dismissed by order dated 17.10.2014. The Applicant again filed revision before the Respondent No.2 which was heard by Smt. Archana Tyagi the then Additional Director General of Police (Administration) whereby punishment of removal from service was modified into punishment of compulsory retirement by order dated 12.01.2016. The Applicant again challenged the said order by filing review petition before Government in which punishment of compulsory retirement was modified into punishment of reduction to lower time scale for three years without any effect on future increments and the Applicant was ordered to be reinstated. However, he was held not entitled to pay and allowances for out of service period and the said period was to be considered for pension purpose. Apart, Government directed the Applicant to execute the bond of good behaviour for one year by order dated 05.01.2019 which is again challenged by the Applicant in the present O.A.

4. Shri Arvind Bandiwadekar, learned Counsel for the Applicant sought to assail the impugned order dated 05.01.2019 passed by the Government on following grounds:-

(a) In regular D.E., the statement of witnesses which were already recorded in preliminary enquiry itself where used as an evidence without examining the witnesses afresh and it vitiate the inquiry.

(b) In regular D.E., no Presenting Officer was appointed by the department and an Enquiry Officer himself assumed the role of prosecutor by putting certain questions to the witnesses which is totally impermissible and bias is obvious.

(c) In review, the Government has not examined the matter on merit but restricted its finding to the point of punishment only.

(d) The Applicant is subjected to discrimination since co-delinquent Shri M.K. Yasade was given different treatment though he was found guilty for the charges. In the matter of ASI Yasade, though he was initially dismissed from service, in appeal, his punishment was modified by imposing punishment of reduction to lower post for two years and 50% pay and allowances for out of service period was granted.

(e) The Government in impugned order dated 05.01.2019 imposed one additional condition for execution of bond for good behaviour while reinstating the Applicant which is not permissible in law.

5. Per contra, Smt Archana B.K., learned Presenting Officer sought to justify the impugned order of punishment *inter-alia* contending that in D.E. full and fair opportunity was given to the Applicant and there is no case of breach of principle of natural justice. She tried to contend that in regular D.E. witnesses were examined afresh though it is reproduced as it were in preliminary enquiry. As regard discrimination, she sought to contend that there was one additional charge against the Applicant for threat and misconduct with Assistant Commander Shri Roy, and therefore, punishment given to him is correct and legal. On this line of submission, she submits that the finding recorded in D.E. is based on sufficient and cogent evidence and needs no interference by the Tribunal.

6. At this juncture, before going ahead it would be apposite to see the scope for interference in relation to the finding recorded in disciplinary proceeding. In this behalf, reference of decision of the Hon'ble Apex Court ***(2015) 2 SCC 610 Union of India V/s. P. Gunasekaran*** is necessary. The Hon'ble Supreme Court held that the Tribunal cannot act as a second court of appeal and adequacy as well as reliability of evidence cannot be looked into in judicial review and it is impermissible to re-appreciate the evidences laid before the Enquiry Officer and to reach to different findings. It is made clear by the Hon'ble Supreme Court that interference is not warranted unless findings of facts is perverse or punishment is disproportionate which shocked its conscience. As regard the scope of the Hon'ble High Court and Tribunal in

such matter following are the parameters laid down in the said judgment, which are as under:-

"The High Court can only see whether :

(a) The enquiry is held by a competent authority;
(b) the enquiry is held according to the procedure prescribed in that behalf;
(c) there is violation of the principles of natural justice in conducting the proceedings;
(d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;
(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
(i) the finding of fact is based on no evidence."

7. Further, the Hon'ble Supreme Court in Para No.13 of the Judgment held as follows :

"**13.** Under Article 226/227 of the Constitution of India, the High Court shall not:
(i) re-appreciate the evidence;
(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;
(v) interfere, if there be some legal evidence on which findings can be based.
(vi) correct the error of fact however grave it may appear to be;
(vii) go into the proportionality of punishment unless it shocks its conscience."

8. This takes me to switch over to the fact of the present case to examine as to whether interference in the impugned order is warranted on the touch stone of the parameter laid down by the Hon'ble Supreme Court in ***Gunasekaran's case*** (cited supra).

9. Following are the charges framed against the Applicant and co-delinquent M. K. Yasade

"**दोषारोप :-**

या गटाचे आस्थापनेवरील पोलीस अधिकारी कर्मचारी यांचा दिनांक :२२/१२/२०२१ रोजी गटमुख्यालय ते वडाचीवाडी जाणे व परत असा ''रोड रन वॉक गटमुख्यालयात परतत असताना सपोशि /२६१ प्रकाश खंबाजी गोडावले रोड रन वॉक संपल्योचे ठिकाणी खाली पडले. सदर ठिकाणी गट रुग्णालय वैदयकीय अधिकारी डॉ. अष्टेकर यांनी गोडावले यांची प्राथमिक तपासणी करुन त्यांना तात्काळ नोबल हॉस्पीटल येथे ॲडमिट करण्यास सांगितले. सपोशि/२६१ गोडावले यांना रुग्णालयात ॲडमिट केल्यानंतर तेथील डॉक्टरानी सपोशि/गोडावले यांचा ०९:२० मिनिटानी हदयविकाराने निधन झाले सदर कर्मचारी यांचे मुत्युचे निश्चित कारण समजण्याकरीता सपोशि/२६१ गोडावले यांचे पार्थिव दुपारी १२:०० चे दरम्यान मिलीटरी कमांड हॉस्पीटल, वानवडी पुणे पोस्ट मॉर्टमसाठी पाठविण्यात आले होते. सपोशि/२६१ गोडावले यांच्या मुत्युची घटना समजताच नातेवाईक व गटातील पोलीस कर्मचारी मिलीटरी कमांड हॉस्पीटल, वानवडी पुणे येथे बाहेर थांबले होते.

२/- सदरवेळी तुम्ही असई/८४४ एम के येसादे व सपोशि/१० आर एस देशमुख (शेवाळे) ''सपोशि/२६१ गोडावले यांचे पार्थिव विशेष पोलीस महानिरीक्षक, रारापो बल पुणे परिक्षेत्र पुणे यांचे कार्यालयासमोर घेउन जाउ व जो पर्यंत आयजीसाहेब येत नाहीत तोपर्यंत पार्थिव ताब्यात घ्यायचे नाही'' असे वक्तव्य करुन मयताचे नातेवाईकास व जमलेल्या जमावास भडविण्याचा प्रयत्न केला. तसेच सहाय्यक समादेशक एन आर राय यांना दमदाटी, वरिष्ठ अधिका-याबददल प्रक्षोभक वक्तव्य व अर्वाच्य भाषेत शिवीगाळ करुन मयताच्या नातेवाईकामध्ये गैरसमज व तणावाचे वातावरण निर्माण केले.

३/- तसेच मयत सपोशि/२६१ गोडावले यांचा मतदेह दिनांक २२/१२/२०१२ रोजी अदांजे १७:०० च्या सुमारास शासकिय इतममाने सलामीसाठी गटातील एटीसी ग्राउंडवर आणलेनंतर उपस्थित जमावासमोर तुम्ही सपोशि/१० देशमुख (शेवाळे) सहाय्यक समादेशक एन आर राय यांना दमदाटी, धमकाविणे आणि विशेष पोलीस महानिरीक्षक, रारापो बल पुणे यांचे विरुध्द प्रक्षोभक वक्तव्य, अर्वाच्च भाषेत शिवीगाळ केली. दरम्यान तुमच्या दोघांच्या बेशिस्त वर्तनाबाबत प्राथमिक चौकशी आदेशित करण्यात आली होती. सदर प्राथमिक चौकशीमध्ये आपल्यावर ठेवण्यात आलेले दोषारोप सकत दर्शनी सिध्द झालेले आहेत.

४/- तुमचे हे वर्तन बेशिस्तपणाचे, बेजबाबदारपणाचे व पोलीस खात्याचे शिस्तीस न शोभणारे आहे म्हणून तुमच्याविरुध्दचे दोषारोप असे."

10. **<u>As to ground No.(a) and (b):</u>**

True, as per the Departmental Enquiry Manual ideally the Enquiry Officer is required to record the statements of witnesses afresh and statements recorded in preliminary enquiry should not be used.

Perusal of record of inquiry produced by learned Presenting Officer along with additional affidavit (Page nos.101 to 222) reveals that initially in preliminary enquiry statements of witnesses were examined by preliminary Enquiry Officer Shri Satpute and except one statement of Shri Satish Shirsagar statements of remaining witnesses were hand written. Later, in the course of regular D.E. of those witnesses were again called and their statements were recorded afresh though it is verbatim reproduction of the statement recorded in preliminary enquiry. All these statements are type written. There is specific endorsement on each statement that statements were read over to the witnesses and they accepted its correctness. Thereafter next friend of the Applicant has cross examined the witnesses. As such, though the statements before regular Enquiry Officer is reproduced in verbatim the fact remains that their statements were recorded afresh in presence of delinquent and opportunity of cross examination was availed by the Applicant's next friend. Needless to mention that the strict procedure of Indian Evidence Act is not applicable to domestic enquiry. All that required is observance of rules of principle of natural justice and delinquent should have opportunity to cross examine the witnesses and no material should be relied against the delinquent

without being given an opportunity of cross examination. It these elementary principle or domestic enquiry is satisfied then enquiry is not open to attack on the ground that in regular inquiry, statements of witnesses were not recorded afresh.

11. As regard non-appointing of Presenting Officer, learned Counsel for the Applicant sought to contend that there should have been appointment of independent Presenting Officer for fair enquiry but in present case, Enquiry Officer himself examined the witnesses and also put certain questions which is indicative of bias. He referred to ***(2018) 2 SCC (L & S) 356 Union of India & Ors. V/s Ram Lakhan Sharma.*** In that case the issue posed before the Hon'ble Supreme Court was whether when the statutory rules governing the enquiry does not contemplate appointment of Presenting Officer whether non-appointment of Presenting Officer *ipso-facto* vitiates the enquiry. The Hon'ble Supreme Court held that "Enquiry Officer has to be independent and not representative of the disciplinary authority and if he starts acting in any other capacity and proceed to act in a manner as if he is interested in eliciting evidence to punish delinquent, the principle of bias comes into place. In this judgment, the Hon'ble Supreme Court summarises the principles in this behalf which are as under :-

> *"(i) The Inquiry Officer, who is in the position of a Judge shall not act as a Presenting Officer, who is in the position of a prosecutor.*
>
> *(ii) It is not necessary for the Disciplinary Authority to appoint a Presenting Officer in each and every inquiry. Non- appointment of a Presenting Officer, by itself will not vitiate the inquiry.*
>
> *(iii) The Inquiry Officer, with a view to arrive at the truth or to obtain clarifications, can put questions to the prosecution witnesses as also the defence witnesses. In the absence of a Presenting Officer, if the Inquiry Officer puts any questions to the prosecution witnesses to elicit the facts, he should thereafter permit the delinquent employee to cross-examine such witnesses on those clarifications.*
>
> *(iv) If the Inquiry Officer conducts a regular examination-in-chief by leading the prosecution witnesses through the prosecution case, or puts leading questions to the departmental witnesses pregnant with answers, or cross-examines the defence witnesses or puts suggestive questions to*

establish the prosecution case employee, the Inquiry Officer acts as prosecutor thereby vitiating the inquiry.

(v) As absence of a Presenting Officer by itself will not vitiate the inquiry and it is recognised that the Inquiry Officer can put questions to any or all witnesses to elicit the truth, the question whether an Inquiry Officer acted as a Presenting Officer, will have to be decided with reference to the manner in which the evidence is let in and recorded in the inquiry."

12. Admittedly, in present case, no Presenting Officer was appointed by the department. Apart, indisputably there is no such provisions in Maharashtra Police (Punishment & Appeal) Rules for appointment of Presenting Officer alike specific provision in Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. Whether the Enquiry Officer has merely acted as an Enquiry Officer or has also acted as a Presenting Officer and caused serious prejudice to the delinquent depends upon the fact and circumstances of the matter and manner in which enquiry is conducted. Non- appointment of Presenting Officer *ipso-facto* would not vitiate the findings recorded by him where Presenting Officer is not appointed and Enquiry Officer put certain questions to the witnesses with object to arrive at truth. True, in present case, the Enquiry Officer has put several questions to the witnesses as seen from the record. However, it is only in a case where it is shown that Enquiry Officer has put leading questions suggestive of answers or there is other material on record indicating persecution in that event, there may be issue of bias. Therefore, only because the Enquiry Officer has put some questions to elicit the truth that would not vitiate enquiry particularly when full opportunity of cross examination was given and availed by the delinquent. It cannot be said that Enquiry Officer has assumed the role of Presenting Officer or as a Prosecutor.

13. Suffice to say, the submission advanced by learned Counsel for the Applicant that Enquiry Officer acted as prosecutor and it vitiate enquiry holds no water.

14. **As to ground 'c'**

As regard findings recorded by Enquiry Officer and accepted by Disciplinary Authority holding the Applicant guilty for the charges levelled against him all that learned Counsel for the Applicant submits that the Government while deciding review application has not considered merits in the matter and consideration was restricted to the punishment only. He, therefore, tried to contend that there was no such consideration of merits in the matter by Government, and therefore, impugned order is liable to be quashed and Applicant be exonerated from the charges levelled against him. In first place, as stated earlier, the scope of judicial review by this Tribunal in the matter of D.E. is very limited. Learned Counsel for the Applicant could not point out as to how the findings holding the Applicant guilty could be termed perverse or unsustainable in law.

15. I have gone through the evidences of witnesses as well as defence witnesses. The department has examined 12 witnesses whose evidences clearly demonstrate that Applicant got upset because of death of his colleague, police Constable Godavle in road run walk and tried to provoke his colleagues who were gathered near dead body saying that they will not take the dead body for funeral unless the Special Inspector General of Police, SRPF come forward. Only because these witnesses belong to the department that cannot be the ground to discard their testimony. Nothing is elicited in their cross examination so as to demolish their credibility. Needless to mention, the strict rules of Evidence Act are not applicable to departmental inquiry and where charges are supported by some evidences and the Disciplinary Authority as well as Appellate Authority is satisfied interference with the same in limited jurisdiction of judicial review is impermissible. The merits of the case and acceptability of the evidence of witnesses examined by the department is well considered by the Disciplinary Authority as well as by the Appellate Authority as seen from the orders of punishment. The Enquiry Officer in his report has also reproduced relevant portion from the deposition of witnesses for arriving to

the conclusion of holding the delinquent guilty for the charges. Suffice to say, this is not a case of finding on no evidence or perversity in finding. Indeed, the finding is supported by cogent and sufficient evidence of the witnesses examined by the department. Needless to mention, in D.E. the proof beyond reasonable doubt as required in criminal case is not criteria and the charge can be sustained on the preponderance of probabilities.

16. In view of the aforesaid discussion, I find no merits in the submission advanced by learned Counsel for the Applicant that charges framed against the Applicant are not proved.

17. **As to ground No. 'd'**

Insofar as the discrimination issue is concerned, it is rightly pointed out by learned Counsel for the Applicant that in the matter of co-delinquent ASI Yasade, he was given 50% Pay and Allowances for out of duty period. Whereas, in the matter of Applicant, the Government declined to Pay and Allowances for out of duty period. The submission advanced by learned P.O. that there was additional charge against present Applicant for misbehaving with Assistant Commander Shri Roy, and therefore, his misconduct is more serious warranting denial of Pay and Allowances is unacceptable.

18. True, insofar as the Applicant is concerned, there is additional charge that he threatened and misbehaved with Assistant Commandant Shri N.R. Roy in evening when body was kept in A.T.C. ground for paying customary homage (salami). However, interestingly evidence of Shri N.R. Roy who was examined as an additional witness being not cited in charge sheet is somewhat different. To the answer of question no.11, Shri N.R. Roy, Assistant Commander has specifically stated that Applicant did not threaten, abused or misbehaved with him. As such, the Assistant Commandant Shri Rai himself disowned the prosecution case that Applicant misbehaved or abused or threaten him. True, in the questions asked by Enquiry Officer whiling giving answer to question No.10, he admits that Applicant asked him to give signature on one paper. However, the charge was about threatening, abusing and misbehaving with

Assistant Commandant Shri Roy who himself disowned it giving clean chit to the Applicant so far this additional charge is concerned. Here, it needs to be stated the background of the incidence. The Applicant seems upset because of death of his collegue of run walk alleging that the department ought not to have asked them for such a long run walk without undergoing medical examination for fitness to undertake such long run walk. The Applicant seems raising plea for justice to widow of deceased by providing appointment on compassionate ground or some sort of assurance to the bereaved family. Be that as it may, there being clear admission of Assistant Commandant Shri N.R. Roy that Applicant did not abuse or threaten him, his case was not different from the charges levelled and proved against co-delinquent ASI M.K. Yasade. Thus, the charges against the Applicant and ASI Yasade being same, the Applicant also ought to have been given 50% Pay and Allowances for out of service period subject to limitation of three years. Suffice to say, the discrimination in this behalf is obvious. Secondly indeed, no notice as required under Rule 70(4) of Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal), Rules, 1981 was given to the Applicant before passing such order of refusing Pay and Allowances for out of duty period. On that count also the order declining Pay and Allowances for out of duty period is bad in law.

19. For the aforesaid reasons, the Applicant being similarly situated person is entitled to same treatment of benefit of 50% Pay and Allowances for out of duty period subject to limitation of three years.

20. **<u>As to ground no. 'e'</u> :-**

The Government while passing impugned order dated 05.01.2019 imposed one more condition (clause No.4 of order) directing the Applicant to execute the bond of good behaviour on his reinstatement for one year and he was subjected to be in surveillance for one year. The said clause is as under :-

> *"४. वादी श्री.राजेंद्र शिवाजी देशमुख (शेवाळे), माजी सपोशि मुळ घटक कार्यालय, राज्य राखीव पोलीस बल गट क्र.१ पुणे यांना सेवेत पुन:स्थापनेने रुजु करुन घेतांना ते बेशिस्त वर्तन करणार नाहीत याबाबतचे हमीपत्र लिहुन घेण्यात येवून एक वर्ष निरिक्षण करावे. बेशिस्त वर्तन आढळले तर सेवेतुन कमी करण्यात यावे.''*

21. It is rightly pointed out by learned Counsel for the Applicant that there is no such provision in Maharashtra Police (Punishment & Appeal) Rules, 1956. Learned P.O. also could not point out any such provision. In absence of any such provision, the said clause will have to be struck down. Indeed, if after reinstatement the Applicant commits any misconduct, he can be dealt with departmentally afresh in accordance to law and the question of undertaking or bond by the Government servant does not survive.

22. The totality of the aforesaid discussion leads me to conclude that impugned order dated 05.01.2019 holding the Applicant guilty for the charges levelled against him and imposing punishment of reduction to basic pay for three years without cumulative effect needs no interference. However, clause no.3 of impugned order denying Pay and Allowances for out of duty period and clause No.4 about undertaking and bond for good behaviour for one year is liable to be quashed. Hence the following order :-

ORDER

(A) Impugned order holding the Applicant guilty for the charges levelled against him and imposing punishment of reduction to basic pay for three years (without cumulative effect) is upheld.

(B) The Applicant is entitled to 50% Pay and Allowances for out of duty period subject to maximum period of three years and it be paid within two months from today.

(C) Clause no.4 of impugned order about execution of bond for good behaviour for one year is quashed and set aside.

(D) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Place :Mumbai
Date : 06.01.2022
Dictation taken by : VSM
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