

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.104 OF 2019

DISTRICT : PUNE

Shri Ganesh Arjun Kamble.)
Age : 54 Yrs., Working as Assistant Sub-)
Inspector, Residing at Swargate Police Line No.)
2/88, Pune – 411 042.)...**Applicant**

Versus

Deputy Commissioner of Police.)
Traffic branch, Pune City, Pune.)...**Respondent**

Mrs. Punam Mahajan, Advocate for Applicant.

Mr. A.J. Chougule, Presenting Officer for Respondent.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 08.03.2019

JUDGMENT

1. In the present Original Application, challenge is to the suspension order dated 20.12.2018 passed by Respondent on the ground of competency invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. The Applicant is serving as Assistant Sub-Inspector (ASI) in Traffic Branch, Pune. On 20.12.2018, the Respondent (Deputy Commissioner of Police)

suspended the Applicant alleging misconduct invoking Rule 3(1-A)(i)(a) of Bombay Police (Discipline & Appeal) Rules, 1956 read with Sections 25 and 26 of Maharashtra Police Act, 1951 in contemplation of Departmental Enquiry (D.E). The Applicant has challenged the impugned suspension order on the ground that the Respondent is not competent to suspend him, as the power vests with Commissioner of Police only. The Applicant therefore contends that the impugned suspension order is illegal and not sustainable in law.

3. The Respondent resisted the application by filing Affidavit-in-reply (Page Nos.24 to 29 of the Paper Book) *inter-alia* denying that the impugned suspension order suffers from any illegality. The Respondent sought to contend that the Applicant misbehaved with his senior Officers, and therefore, guilty of misconduct. As regular D.E. was proposed, he was kept under suspension by impugned order invoking Rule 3(1-A)(i)(a) of Bombay Police (Discipline & Appeal) Rules, 1956. As regard competency, the Respondent contends that the Commissioner of Police, Pune by order dated 03.06.2017 delegated the powers of disciplinary action to the Deputy Commissioner of Police, and therefore, the Respondent is empowered to suspend the Applicant. With this, the Respondent prayed to dismiss the O.A.

4. Smt. Punam Mahajan, learned Advocate for the Applicant urged that the issue of empowerment of Deputy Commissioner of Police to suspend Police Personnel of the rank of Applicant is no more open to debate in view of specific provisions of law as well as decision rendered by this Tribunal in ***O.A.1061/2018 (Sanjay Jagtap Vs. Deputy Commissioner of Police) decided on 21.01.2019***. She further pointed out that, as per Notification dated 12.01.2011 issued by Home Department, the exercise of powers under Section 25 read with Rule 3 of Bombay Police (Discipline & Appeal) Rules, 1956, the Government of Maharashtra empowers certain authorities specified in the Notification for suspension of Police Officers and accordingly, the power vests with Commissioner of Police and

not Deputy Commissioner of Police. She, therefore, urged that the impugned suspension order is *ex-facie* illegal and liable to be set aside.

5. Per contra, Shri A.J. Chougule, the learned P.O. sought to contend that, in view of delegation of powers by Commissioner of Police as reflected in the Officer Order dated 03.06.2017, the Deputy Commissioner of Police is empowered to suspend the Applicant. The learned P.O. also sought to place reliance on the Judgment of Hon'ble Supreme Court **1995 SCC (L & S) 1357 (Ram Kishan Vs. Union of India)**.

6. At this juncture, it would be apposite to reproduce Rule 3(1-A) referred by the Respondent in the impugned order, which is as follows :

“3. (1) Without prejudice to the provisions of any law for the time being in force, the following punishments may be imposed upon any Police Officer, namely:-

(a-1) [* * *]

(a-2) suspension;

(i) reduction in rank, grade or pay or removal from any office of distinction or withdrawal of any special emoluments;

(i-a) compulsory retirement;

(ii) removal from service which does not disqualify from future employment in any Department other than the Police Department.

(iii) dismissal which disqualifies from future employment in Government Service.

(1-A) (i) The appointing authority or any authority to which it is subordinate or any other authority empowered by the State Government in this behalf may place, a Police Officer under suspension where—

(a) an inquiry into his conduct is contemplated or is pending,

or

(b) a complaint against him of any criminal offence is under investigation or trial:

Provided that where the order of suspension is made by an authority lower in rank than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order of suspension was made.”

7. The learned Advocate for the Applicant has rightly referred to Notification dated 22.01.2011 whereby powers of suspension of Police Officers of and below the rank of Police Inspectors are conferred upon all Commissioners of Police including Railway Police Commissioner in their respective Commissionerate. Thus, it is quite clear that, in exercise of powers under Rule 1-A of 'Rules 1956', the Government empowered the authorities specified therein to exercise the powers of suspension. The Law does not empower D.C.P to exercise the powers of suspension. It is only Commissioner of Police or any other authority empowered by the State Government in this behalf can exercise such powers. The name of D.C.P. is nowhere figured in Notification dated 12.01.2011.

8. As regard Office Order dated 03.06.2017, needless to mention that, all Circulars are subservient to legislative mandate and cannot be contrary to statutory principles. It cannot override express provisions of law nor it substitute legal position. Therefore, Office Order dated 03.06.2017 has no sanctity in law and it is non-est. Therefore, the submission of learned P.O. that D.C.P. is competent to exercise powers of suspension is misconceived and contrary to the settled legal position.

9. Now, coming to the proviso to Rule 1-A of 'Rules 1956', it provides that where the order of suspension is made by authority lower in rank than the appointing authority, such authority shall forthwith report to the appointing authority, the circumstances in which the order of suspension was made. If proviso is read conjointly with Rule 3(1-A)(i), the mandate of the law is clear that, any such authority exercising the powers of suspension must be empowered by the State Government in this behalf. In other words, there must be

empowerment to such lower authority by none other than State Government, which is admittedly not in existence in the present matter.

10. In so far as the decision of Hon'ble Supreme Court in **Ram Kishan's** case (cited supra) is concerned, it relates to the interpretation of Sections 4 & 11 of Delhi Police (Appointment and Recruitment) Rules, 1980 which empowers Additional Deputy Commissioner to take disciplinary action against Police Personnel. Therefore, this authority is of little assistance to the Applicant in the present case in view of Rule 3(1-A) of Bombay Police (Discipline & Appeal) Rules, 1956

11. In the impugned order, a reference of Sections 25 and 26 of Maharashtra Police Act is also made stating that by virtue of these provisions, the suspension order is being passed. However, material to note that, those powers as per Section 25(2-A) vests with Director General and Inspector General of Police including Additional Director General, Special Inspector General, Commissioner including Joint Commissioner, Additional Commissioner and Deputy Inspector General. It does not include Deputy Commissioner of Police. This being the position, needless to mention that the Deputy Commissioner of Police is not at all empowered to suspend the Applicant.

12. In fact, this issue is no more open to debate in view of various decisions rendered by this Tribunal i.e. in O.A.1061/2018 decided on 21.01.2019, O.A.504/2012 decided on 24.01.2013 and O.A.73/2015 decided on 11.06.2015. The Tribunal has categorically recorded finding that, in view of Notification dated 12.01.2011, the DCP has not power or jurisdiction to suspend Police Officers of and below the rank of P.I. and consequently, suspension orders were quashed.

13. I refrain myself from making any comment about the merits of the charges in D.E. and the present O.A. is decided on the ground of competency of DCP to suspend the Applicant.

14. In view of aforesaid legal position, there is no escape from the conclusion that the DCP is not competent to suspend the Applicant and suspension order deserves to be quashed. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned suspension order dated 20.12.2018 is hereby quashed and set aside.
- (C) The Respondent is directed to reinstate the Applicant in service within two weeks from today with consequential service benefits, as permissible in law.
- (D) No order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai

Date : 08.03.2019

Dictation taken by :

S.K. Wamanse.