

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1052 OF 2022

Mr. Shivanand Hanmant Bobade,)
Aged : 32 years, Occ. Service,)
R/at. A/P. Chinchani, Tal. Tasgaon,)
Dist. Sangli) **...APPLICANT**

VERSUS

- 1) The Special Inspector General)
Of Police, Kolhapur Range,)
Kolhapur, having office at)
Tarabai Park, Kolhapur)
- 2) The Superintendent of Police,)
Sangli, having office at Sangli) **...RESPONDENTS**

Mr. Bhushan A. Bandiwadekar, learned Advocate for Applicant.

Ms. S.P. Manchekar, learned Chief Presenting Officer for Respondents.

CORAM : **Justice Mridula Bhatkar (Chairperson)**
Ms. Medha Gadgil (Member) (A)

RESERVED ON : **27.06.2023**

PRONOUNCED ON : **04.07.2023**

J U D G M E N T

1. The Applicant who is a Police Constable challenges the order dated 07.06.2022 passed by the Respondent No.1, the Special Inspector General of Police, Kolhapur under which he cancelled the earlier order

dated 12.04.2022 passed by the Appellate Authority dated 24.08.2022 thereby setting aside the order of dismissal passed in the Departmental Enquiry and he be given consequential service benefits. It is further prayed that the Respondent No.2, the Superintendent of Police, Sangli be directed to implement the earlier order dated 12.04.2022 and set aside dismissal order dated 07.06.2022.

2. Learned Advocate for the Applicant has submitted that the Appellate Authority after passing the first order has reviewed its own order and while reviewing the order no notice was given to the Applicant and thus no opportunity was available to the applicant to meet the issue made out in the Appellate order dated 07.06.2022. The dismissal order dated 02.07.2021 is passed by Superintendent of Police, Sangli. Respondent No.2, Superintendent of Police, Sangli confirmed the report of the Enquiry Officer and held him guilty and dismissed him from the service. Against this order the Applicant filed Appeal before the Special Inspector General of Police. Learned Advocate has submitted that the Special Inspector General of Police has earlier passed the order on 12.04.2022. During the course of the arguments question was put to the learned Advocate for the Applicant whether the order of the Appellate Authority dated 12.04.2022 was served at any time on the Applicant. Learned Advocate on instruction informs that the order dated 12.04.2022 was never served on the Applicant and the order of the Appeal which was served on him was dated 07.06.2022. After reading the order dated 07.06.2022, on the second page of the said order in paragraph 2, we came across the sentence which is in Marathi. We, therefore, find it necessary to reproduce paragraph 2 :

“या कार्यालयाकडील आदेशाची अंमलबजावणी करण्याबाबत पोलीस अधीक्षक सांगली यांना कळविण्यात आलेले होते. तथापी सदर आदेशाची अंमलबजावणी करणेबाबत पोलीस अधीक्षक सांगली यांना कळविण्या आलेले होते. तथापी सदर आदेशाची अंमलबजावणी होऊन ते सवेत पुनःस्थापित होण्यापुर्वीच बडतर्फ माजी पोशी/१४४ शिवानंद हणमंत बोबडे यांचेविरुद्ध कागद पो.टा.जि. कोल्हापूर ग.रु.न.११६/२०२२ भादविसंक ३९२. १२०, (ब) ३४१, १८१, ५०६, ३४ प्रमाणे दि.१४/०५/२०२२ रोजी १०.४१ बाजता जबरी चोरीचा गुन्हा दाखल झाल्याने अपचारी हे फरार झाले होते. त्यामुळे अपील आदेशाची अंमलबजावणी पोलीस अधीक्षक सांगली यांना करता आली नाही.”

3. We, therefore, wanted to know the true facts in view of the manner in which the paragraph no.2, regarding the service of the earlier order is worded. We made enquiry to learned Advocate. Also same question was put to learned C.P.O. to confirm the statement made by learned Advocate. Learned Advocate has submitted that the order which was admittedly prepared by the Special Inspector General of Police, Appellate Authority, was never served on the Applicant. Thus, we accept and hold that the order dated 12.04.2022 which was on record was though prepared and signed by the Special Inspector General of Police, was never served on the Applicant. Learned Advocate pointed out to the order dated 13.05.2022, Exhibit-F, issued by one Mr. Dixit Gedam, S.P. Sangli, of reinstating the applicant. However, this order was also not served on the Applicant. Learned Advocate for the Applicant relied on the affidavit-in-reply dated 07.12.2022 on behalf of Respondent no.1 and 2 filed by Mr. Ajit Rajaram Tike, Sub Divisional Police Officer in the office of Superintendent of Police, Sangli. He referred to paragraph 16 of the affidavit filed by Respondent No.2, wherein, it is mentioned that the Applicant was directed to remain present to receive the order dated 14.05.2022 of his reinstatement. But, however, subsequently earlier order was reviewed and that fact is mentioned in paragraph 16.

4. Learned Advocate for the Applicant has submitted that the order though was not served on the Applicant, was implemented at the level of

Respondent No.1 i.e., Special Inspector General of Police. He has given the direction to reinstate the Applicant and the order was passed on 13.05.2022. He has submitted that the Superintendent of Police has to do his job of postman and he did that on 13.05.2022. Learned Advocate further pointed out the annexures to the affidavit-in-reply, report of Reserved Police Sub Inspector dated 17.05.2022. The offence was on 14.05.2022 and the Applicant did not attend the Police Station as he is not served the order of reinstatement. He further made second point that the Appellate Authority has no power to review as there is no statutory provision in the Maharashtra Police Act.

5. Learned Advocate has relied on the judgment of Hon'ble Supreme Court in the case of **Bachhittar Singh Versus State of Punjab and Another reported in 1962 Supp (3) SCR 713.**

6. Considering the submissions of learned Advocate and learned C.P.O. and after going through the record, prima facie, we found that the Special Inspector General of Police i.e. Appellate Authority has committed error. Taking into account the grievance of the offence registered as Kagal Police Station, District Kolhapur vide C.R.No.116 /2022 for the offence punishable under Sections 392, 120(B), 341, 181, 506 r/w 34 of the Indian Penal Code, the Special Inspector General of Police has mentioned specifically in his impugned order dated 07.06.2022 that he has accepted the decision of the Enquiry Officer holding him guilty for the charges for which Enquiry was conducted. However, he has mentioned that he is partly satisfied. Therefore, by order dated 12.04.2022 he has reduced the punishment of dismissal to that of withholding three annual increments permanently. The Appellate

Authority has committed gross illegality in considering another criminal case while deciding this appeal. It is the basic principle of law that no appellate judicial or quasi-judicial authority in D.E. is required to deal with the allegations and the charges for which the person is tried before it. No judicial officer or quasi-judicial officer to look into any other material which is outside the scope of trial. The Special Inspector General of Police has committed the blunder in considering another charge or another criminal case which was in fact, the subject matter of another Departmental Enquiry.

7. Learned C.P.O. has relied on the judgment of Hon'ble Supreme Court in case of **State Of Punjab Versus Amar Singh Harika reported in AIR 1966 SC 1313** on the point when dismissal order will be effective.

8. By order dated 12.04.2022 the Appellate Authority has partly allowed the Appeal. He found the explanation of the Appeal satisfactory and hence the Appeal was allowed partly. Though he was held guilty his punishment of dismissal was set aside and he was reinstated. However for his misconduct his annual increment for three years was permanently withheld. Thereafter in the second order of the Appellate Authority the Special Inspector General was Mr. Manoj Lohiya.

9. It is the judgment of five judges of the Hon'ble Supreme Court in the case of **Bachhittar Singh (supra)** the Appellant was a Government Servant and he faced enquiry against him by the Secretary of PEPSU Government. At the end of the enquiry he was dismissed by the order dated 30.08.1956. It was communicated to the Appellant. He filed appeal on the ground that dismissal was disproportionate to

punishment. The Revenue Minister of PEPSU made noting on the file that the charges against the Appellant were serious and proved. However, the punishment of dismissal is harsh as the Appellant is having large family to support and instead of dismissal he can be reverted and if he would not behave properly in future then he would be dealt with severely. On the next date the State of PEPSU merged in the State of Punjab. The Appellant withstand with the said noting / remark of the Revenue Minister as the order of the State Government and it was orally communicated to him by the Revenue Minister. However, this was denied by the State on the ground that it was never communicated officially to the Appellant. After merger, the file was again put by before the Revenue Minister of Punjab, he sought guidance from the Chief Minister and the Chief Minister in April 1957 confirmed the dismissal and the order of this dismissal was communicated to the Appellant on 01.05.1957. He preferred Petition under Article 226 of the Constitution challenging the said dismissal on the ground that earlier his punishment was reduced from dismissal to reversion by the Revenue Minister of PEPSU. The Chief Minister of Punjab cannot sit in review over that order, so the order of Revenue Minister PEPSU was the order of State Government and it was not open to review and consequently, it was not within the competence of the Chief Minister to deal with the matter pertaining to the portfolio of Revenue Minister. The Hon'ble Supreme Court held that merely noting on the file does not amount to order. To be order, it should be expressed in the name of Governor under Article 166 and then it is to be communicated. Thus, it is of the essence that the order has to be communicated to the person who would be affected by that order before the State and that person can be bound by that

order, till its communication the order cannot be regarded as in anything than provisional in character.

10. On the point of effective communication when the order of dismissal is effective learned C.P.O. relied on the judgment of five judges Bench of the Hon'ble Supreme Court in the case of **Amar Singh Harika (supra)**. The Respondent was Assistant Director, Civil Supplies, in the Patiala and East Punjab States Union, was dismissed from service by order dated 03.06.1949 and this order was communicated to him by the Chief Secretary, Pepsu Government, 03.01.1953. The respondent instituted a suit against the Appellant, the State of Punjab, and alleged that the impugned order, whereby he was dismissed from service, was invalid as the said order was passed without holding enquiry and also was disproportionate. In the said matter the Committee was appointed for enquiry. It appears that the Respondent had no knowledge that the Committee has submitted the report. The Committee served questionnaire on him. The Respondent submitted the reply. On that basis the Committee held that charges are proved and held him guilty. He made complaint that the report was not given to him. In between Patiala was merged in East Punjab States Union. In May 1949, the Government of Pepsu communicated him the decision of the enquiry Committee holding him guilty. Respondent tendered his resignation on 06.05.1949 and yet order of dismissal was passed on 03.06.1949. The copy was forwarded to six persons but no copy was sent to the Respondent. It further held that,

“11.

It is plain that the mere passing of an order of dismissal would not be effective unless it is published and communicated to the officer concerned. If the appointing authority passed an order of dismissal, but

does not communicate it to the officer concerned, theoretically it is possible that unlike in the case of a judicial order pronounced in Court, the authority may change its mind and decide to modify its order. It may be that in some cases, the authority may feel that the ends of justice would be met by demoting the officer concerned rather than dismissing him. An order of dismissal passed by the appropriate authority and kept with itself, cannot be said to take effect unless the officer concerned knows about the said order and it is otherwise communicated to all the parties concerned

..... .. We are, therefore, reluctant to hold that an order of dismissal passed by an appropriate authority and kept on its file without communicating it to the officer concerned or otherwise publishing it will take effect as from the date on which the order is actually written out by the said authority; such an order can only be effective after it is communicated to the officer concerned or is otherwise published. When a public officer is removed from service, his successor would have to take charge of the said office; and except in cases where the officer concerned has already been suspended, difficulties would arise if it is held that an officer who is actually working and holding charge of his office, can be said to be effectively removed from his office by the mere passing of an order by the appropriate authority. In our opinion, therefore, the High Court was plainly right in holding that the order of dismissal passed against the respondent on 3rd June 1949, could not be said to have taken effect until the respondent came to know about it on 28th May 1951.”

11. Thus, from the above decision of the Hon’ble Supreme Court in the case of **Amar Singh Harika (supra)** it is to be easily gathered that actual service of the order on that particular person or informing the contents of the order officially in any other mode is also a proper communication or service of the order. In the present case, it is admitted fact that the earlier Special Inspector General (I.G.) has passed order dated 12.04.2022 of the punishment of stopping annual increments for three years but the punishment of dismissal was set aside and he was reinstated in the service. Dismissal by order dated 02.07.2021 was suggested by the Enquiry Officer, Special I.G. However, the same Officer i.e. Special I.G. by order dated 06.06.2022 confirmed the dismissal with reasoned order wherein he has taken into account the conduct of the Applicant.

12. There is twofold issue. First whether the said order dated 12.04.2022 was served on the applicant. Learned Advocate drew our attention on the station diary entry made by the SHO (Station House Office) of Police Head Quarter, Sangli on 14.05.2022. In that dairy it is written that the company orderly ASI Kulkarni has personally reported that the Ex-police Constable Shivanand Hanmant Bobade was contacted on his mobile and he was informed to collect the said order. He did not receive the order till 06.06.2022 and the same Special I.G., issued the order of his dismissal which was personally actually served on him on 07.06.2022. Thus, there was no actual service of the earlier order dated 12.04.2022 of Special I.G. and thus the Disciplinary Authority can review and withdraw its own order before its actual service. Second issue was objections were raised by the learned Advocate that in the reasons given for the dismissal it is found that the Special IG has accepted the findings of the Enquiry Officer and all the six charges against the applicant were proved. Thus the findings were not disturbed but the Disciplinary Authority only on humanitarian ground showed mercy. Thereafter, the authority came across the incident of robbery which took place on 14.05.2022 and therefore as the said order of 12.04.2022 was not served on him the Disciplinary Authority has recorded the reason as to why his first order could not be served properly on the applicant and Disciplinary Authority has rightly considered that his earlier order as it is not served it could be reviewed and has passed the order of dismissal. It is to be noted that the Departmental Enquiry is not a judicial proceedings, but it is quasi judicial procedure. The basic principles of natural justice, legality and procedure are required to be followed. The Applicant is trying to

capitalize the information given to him to collect the order as written in the station dairy as the order is actually served on him. However, this cannot be accepted.

13. The senior of the Government servant is the best person who can assess the conduct and take decision about the competency, usefulness and his moral behavior which is very much required to perform the duty. The applicant is from the Police Force and protector of Rule of law.

14. Hence, under such circumstances, the order passed by the Special I.G. cannot be faulted, hence, O.A. is dismissed.

Sd/-

(Medha Gadgil)
Member (A)

Sd/-

(Mridula Bhatkar, J.)
Chairperson

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