

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.1061 OF 2018**

**DISTRICT : MUMBAI**

1. Shri Sanjay Ramchandra Jagtap. )  
Age : 42 Yrs, Working as Police Head )  
Constable (Now under suspension), )  
R/o. Divine Express, A/20, 4<sup>th</sup> Floor, )  
Mulund (E), Mumbai – 400 081. )
  
2. Shri Balkrishna Ladu Sawant. )  
Age : 56 Yrs, Working as Poilce Head )  
Contable (Now under suspension), )  
R/o. Anupam Tower, Room No.501, )  
Kumbhar Khanpada, Dombivali (E), )  
District : Thane. )
  
3. Shri Vikrant Vilasrao Jadhav. )  
Age : 42 Yrs, Working as Poilce Naik )  
(Now under suspension), )  
R/o. 9/206, Anand Vihar, Near kharegaon )  
Railway Crossing Gate, kalwa (E), )  
District : Thane. )...Applicants

**Versus**

The Deputy Commissioner of Police. )  
Central Zone, Railways, Byculla, Mumbai. )...Respondent

**Mr. A.V. Bandiwadekar, Advocate for Applicants.**

**Mrs. A.B. Kololgi, Presenting Officer for Respondent.**

**CORAM : SHRI A.P. KURHEKAR, MEMBER-J**

**DATE : 21.01.2019**

## JUDGMENT

1. The Applicants have challenged their suspension order dated 05.05.2018 passed by Respondent invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.
2. Shortly stated facts giving rise to this application are as under :

The Applicants were recruited as Police Constable in the year 1996 to 2000, and thereafter, in due course, they were promoted to the post of Police Naik and Police Head Constable. In April, 2018 they were deployed at C.S.M.T. Railway Police Station, Mumbai. On 13.04.2018, they were on duty in Security Squad on Platform Nos.8 to 11. The Respondent alleged that on 13.04.2018 in the morning, they have extracted Rs.1,50,000/- from passenger viz. Mr. Subhash Varma after he alighted from the railway and subjected him to frisking under the garb of checking and security. The preliminary enquiry was conducted wherein the Applicants have found *prima-facie* guilty for misconduct. Consequently, the Respondent viz. Deputy Commissioner of Police, Central Zone, Railway by order dated 05.05.2018 suspended the Applicants in exercise of powers under Rule 3[1-A][i][a] of the Bombay Police (Punishments and Appeals) Rules, 1956 (hereinafter referred to as "Rules 1956"). Thereafter, charge-sheet was served on the Applicants on 18.05.2018. The departmental enquiry has been completed in June, 2018 but still final order is not passed. The Applicants contend that, in the enquiry, the said passenger Mr. Subhash Varma has given clean chit to the Applicants stating that he has no complaint against them. However, despite the said statement, the suspension is continued. The Applicants have, therefore, challenged the suspension order dated 05.05.2018 *inter-alia* mainly on the ground that the Respondent – Dy. Commissioner of Police has no authority and not competent in law to suspend the Applicants. Secondly, as the departmental enquiry is already completed, there is no justification to continue the suspension

of the Applicants. On these pleadings, the Applicants contend that the suspension is illegal and contrary to the provisions of Rule 3[1-A][i][a] of 'Rules 1956' as well as settled principles of law.

3. The Respondent resisted the application by filing Affidavit-in-reply (Page Nos.82 to 91 of Paper Book) *inter-alia* denying that the suspension order is illegal on account of competency or jurisdiction as the Applicants contend. The Respondent sought to justify the suspension order contending that, in the morning of 13.04.2018, the Applicants while on duty at C.S.M.T, Mumbai extracted Rs.1,50,000/- from the passenger and in preliminary enquiry, they were found prima-facie guilty for misconduct. As regard competency of Deputy Commissioner of Police, who passed the impugned order, the Respondent contends that the Commissioner of Police, Railway, Mumbai by order dated 22.07.2003 authorized Deputy Commissioner of Police to pass such orders of suspension amongst others. The Respondent, therefore, denied that there is any lack of jurisdiction while passing the suspension order. The Respondent further contends that, as per proviso to Rule 3[1-A][i][a] of 'Rules 1956', the Respondent had immediately forwarded the report to the Commissioner of Police, and therefore, there is no illegality in suspension order. The Respondent denied that in departmental enquiry, clean chit has been given to the Applicants. In this behalf, the Respondent contends that the Applicants were found guilty and the D.E. is on the verge of passing the final order by the disciplinary authority. On these pleadings, the Respondent prayed to dismiss the application.

4. Shri A.V. Bandiwadekar, learned Advocate for the Applicants vehemently urged that the Respondent i.e. Deputy Commissioner of Police was not competent in law to suspend the Applicants, as the appointing authority is the Commissioner of Police. He has further invited my attention to Notification dated 12<sup>th</sup> January, 2011 (Page No.80 of P.B.) issued by Home Department whereby in exercise of powers under Section 25 read with Section 5(b) of

Bombay Police Act, 1951 and powers conferred by Clause I of Sub-Rule [1-A] of Rule 3 of Bombay Police (Punishments and Appeals) Rules, 1956, the Government of Maharashtra empowers the authorities specified in the Notification for suspension of the Police Officers as mentioned therein. As per this Notification [Serial No.2], all Commissioners of Police (including Railway Police Commissioner) in their respective Commissionerate are empowered to suspend the Police Officers of and below the rank of Police Inspectors. Adverting to this Notification, learned Advocate for the Applicant strenuously urged that it is only Commissioner of Police who is empowered to suspend the Applicants and Deputy Commissioner of Police is not at all competent or empowered to pass suspension orders. He further canvassed that, this aspect is no more *res-integra* in view of decisions of this Tribunal in ***O.A.No.504/2012 (Pravin G. Ahire Vs. Deputy Commissioner of Police) decided on 24.01.2013*** and ***O.A.No.73/2015 (Laxman M. Rathod Vs. Deputy Commissioner of Police) decided on 11.06.2015***.

5. The learned Advocate for the Applicant in alternative submission invited my attention to the proviso to Rule 3(1-A) of 'Rules 1956' and emphasized 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. According to him, in the present case, there is no such compliance of this proviso and on this ground also, the order is unsustainable in law.

6. Per contra, Smt. A.B. Kololgi, learned P.O. urged that, though appointing authority of the Applicant is Commissioner of Police, the Respondent exercised the power to suspend the Applicant by virtue of Office Order issued by Commissioner of Police dated 22.07.2003 (Page No.114 of P.B.). She further canvassed that the Respondent immediately reported the matter to the Commissioner of Police describing the circumstances in which the order of

suspension was made in compliance of proviso to Rule 3(1-A) of 'Rules 1956', and therefore, the suspension order is unassailable.

7. In this reference, the learned P.O. has produced the extract of Outward Register, which shows that the suspension order was forwarded to the Commissioner of Police. The extract of Outward Register reveals that the said report was received in the office of Commissioner of Police on 07.05.2018. The report of Respondent accompanying the copy of suspension order is placed on record (Page No.121-A of P.B.). It bears Outward Number 3555/18, dated 05.05.2018. In extract of Outward Register also, there is mention of communication having Outward Number 3555/18. On this line of submission, the learned P.O. submitted that the challenge to the suspension order holds no water.

8. At this juncture, it would be material to refer pleadings in reply filed by the Respondent. In Para No.13, the contentions made in this behalf are as follows :

**"13.** With reference to contents of Paragraph Nos.6.9, 6.10 and 6.11, I say that the contents of these paras are not true and correct. Commissioner of Police, Railway is competent authority to appoint Applicants and hence Commissioner of Police has right and authority to suspend Applicants. Before 1999 Superintendent of Police was competent authority but after 1999 the said right gone to Commissioner of Police. In this case, Commissioner of Police has given authority to D.C.P. The said contents are mentioned in order dated 05.05.2018. As per Commissioner of Police, Mumbai Railway's order dt.22-7-2003, clearly shows the duties of the D.C.P. As per the said order respondent completed his duty. Hence the said order dt. 5.5.2018 is legal."

9. As such, there is no denying that the appointing authority is Commissioner of Police. The Respondent sought to contend that the Commissioner of Police, Railway, Mumbai by Office Order dated 22.07.2003 delegated certain powers to Deputy Commissioner of Police and in exercise of it, the suspension order has been issued. There is also reference of Office Order dated 22.07.2003 in impugned order of suspension dated 05.05.2018.

10. At this juncture, it would be appropriate to reproduce Rule 3(1-A) with its proviso, 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.”

11. 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. This being the position, needless to mention that it

supersedes the Office Order dated 22.07.2003 issued by Commissioner whereby he purportedly delegated the powers of suspension to Deputy Commissioner of Police. 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.

12. As regard Office Order dated 22.07.2003, 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 22.07.2003 has no sanctity in law and it is non-est. Furthermore, in view of Notification dated 12.01.2011, it supersedes all earlier Circulars, if any. 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.

13. 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. Therefore, only because D.C.P. forwarded the report to the Commissioner of Police as contemplated in proviso that would not legalize or validate the suspension order as DCP is not at all empowered in this behalf.

14. The learned P.O. sought to place reliance on Judgment of Hon'ble Supreme Court in Civil Appeal No.10831/2010 and Civil Appeal No.10832/2010 decided on 24<sup>th</sup> January, 2017. In that case, the dismissal order passed by Inspector General of Police and the order of suspension passed by Additional Commissioner of Police were under challenge. The Tribunal as well as Hon'ble High Court held that the authorities passing order of dismissal / suspension were not competent authorities. However, the Hon'ble Supreme Court allowed the appeals referring provisions of Section 25(1) of Bombay Police Act and Rule 3(1-A)(i) of 'Rules of 1956' with the observation that the appointing authority or any other authority to which its subordinate can pass the order of suspension pending enquiry. Whereas in the present case, the order of suspension has been passed by D.C.P. without any authority in this behalf specially empowered by the Government. Besides, by Notification dated 12<sup>th</sup> January, 2011, the powers are conferred on Commissioner of Police only to suspend Police Officers of and below the rank of P.Is. The situation before Hon'ble Supreme Court was prior to the issuance of Notification dated 12<sup>th</sup> January, 2011. Therefore, in my humble opinion, the Judgment of Hon'ble Apex Court is of little help to the Respondent in the present case.

15. In view of aforesaid discussion, there is no escape from the conclusion that the DCP is not competent to suspend the Applicants. On this ground alone, the suspension order deserves to be quashed.

16. I do not think it appropriate to make any comment about the merits of charges framed in the D.E. Let the competent authority decide the departmental proceedings in accordance to law.

17. As rightly pointed out by the learned Advocate for the Applicants, the issue about the competence of DCP to suspend the Police Officers of and below the rank of Police Inspectors has been subject matter of the decision in earlier

O.As vide O.A.No.504/2012, decided on 24.01.2013 and O.A.No.73/2015 decided on 11.06.2015. In both the O.As, this Tribunal categorically recorded finding that in view of Notification dated 12.01.2011, the DCP has no power or jurisdiction to suspend the Police Officers of and below the rank of Police Inspectors. Consequently, the suspension orders passed by DCP was quashed and set aside. It appears that, despite the pronouncements on the issue involved in the present matter, the Respondent is averse to take remedial measure and to act in accordance to law. Be that as it may, the impugned suspension order dated 05.05.2018 having issued by DCP for the reasons stated above is not sustainable in law and liable to be quashed.

18. The necessary corollary of the aforesaid discussion leads me to sum-up that the application deserves to be allowed. Hence, the following order.

### **ORDER**

- (A) The Original Application is allowed.
- (B) The impugned suspension order dated 05.05.2018 is hereby quashed and set aside.
- (C) The Respondent is directed to reinstate the Applicants 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 : 21.01.2019

Dictation taken by :

S.K. Wamanse.